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Standing Committee on Public Accounts



Special Report on Ministry of Housing Contract with Mr. Dino Chiesa

2nd Session, 34th Parliament
39 Elizabeth II

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STANDING COMMITTEE ON
PUBLIC ACCOUNTS



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ASSEMBLÉE LÉGISLATIVE


**STANDING COMMITTEE
ON PUBLIC ACCOUNTS**

SPECIAL REPORT

ON

**MINISTRY OF HOUSING
CONTRACT WITH
MR DINO CHIESA**

**2nd Session, 34th Parliament
39 Elizabeth II**



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Queen's Park
March 1990

The Honourable Hugh Edighoffer, M.P.P.,
Speaker of the Legislative Assembly.

Sir,

Your Standing Committee on Public Accounts has the honour
to present its Report and commends it to the House.

A handwritten signature in cursive script, reading "Ed Philip".

Ed Philip, M.P.P.
Chair

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TABLE OF CONTENTS

	<u>Page No.</u>
PREAMBLE	1
INTRODUCTION	2
OVERVIEW OF THE PROVINCIAL AUDITOR'S CONCLUSIONS AND COMMITTEE RECOMMENDATIONS	2
Provincial Auditor's Conclusions	2
Committee's Recommendations	3
CANDIDATE SEARCH PROCESS	4
Preliminary Discussions (1986)	4
Employment/Salary Contract Proposal	4
Fee for Service/Contract Alternative	5
Management Board Approval	6
Selection Process	7
Procedural Problems in the Interview Process	13
Hiring Delay	15
LIST OF RECOMMENDATIONS	16
APPENDIX A: Terms of Reference: Standing Committee on Public Accounts	
APPENDIX B: Schedule of Hearings	
APPENDIX C: Candidate Selection Criteria, Ministry of Housing	
APPENDIX D: Provincial Auditor's Report: "Audit of Contract with Dino Chiesa"	

PREAMBLE

The Standing Committee on Public Accounts met on October 26, 1989 to discuss the audit on the Ministry of Housing's contract with Mr. Dino Chiesa. Ministry officials in attendance included the Deputy Minister, Ministry of Housing; the former Deputy Minister of Housing and, now the Deputy Minister, Office for the Greater Toronto Area, Ministry of Municipal Affairs; the former Deputy Minister of Housing, currently the Deputy Treasurer and Deputy Minister of Economics, Ministry of Treasury & Economics; and the General Manager, Corporate Resources Management, Ministry of Housing.* Mr. Douglas F. Archer, Provincial Auditor and Mr. N.J. Mishchenko, Director, Special Assignments Branch attended from the Office of the Provincial Auditor.

This report is based primarily on the audit, prepared by the Office of the Provincial Auditor and the hearing at Queen's Park, Toronto. The current Deputy Minister of Housing, Mr. Glenn Thompson, filed a statement with the Clerk of the Standing Committee on Public Accounts on October 26, 1989 and selected parts of this document have been referred to in this Committee Report. Readers may wish to consult this statement in its entirety and in Hansard to fully appreciate the position put forward by the Ministry of Housing.

***Officials in attendance:**

Thompson, Glenn R., Deputy Minister, Ministry of Housing;
Church, Gardner, Former Deputy Minister; Deputy Minister, Office for the Greater Toronto Area, Ministry of Municipal Affairs;
Davies, Bryan, Former Deputy Minister; Deputy Treasurer and Deputy Minister of Economics, Ministry of Treasury and Economics; and
Temple, J. Arnie, General Manager, Corporate Resources Management

INTRODUCTION

The Standing Committee on Public Accounts passed a motion on June 29, 1989 instructing the Provincial Auditor to conduct an audit on the hiring of Mr. Dino Chiesa as a consultant to the Ministry of Housing. The Terms of Reference for the audit were as follows:

That the Provincial Auditor immediately conduct an audit of the process used to award a Ministry of Housing consulting contract to Dino Chiesa; and that the audit terms of reference should specifically include, but not be limited to, an evaluation of the competitive acquisition procedure, fair access for vendors of consulting services, treatment of vendors, assignment substantiations and documentation such as Management Board approvals.

Mr. Dino Chiesa had been hired as a Special Advisor on Housing Advocacy for the Housing Advocacy Task Force, Ministry of Housing, to assist with the affordable housing policy in May 1989. The Ministries of Housing and Government Services identified this position of special advisor as important.

As discussed in the Auditor's Report, the revised Housing First Policy objective is to develop surplus Government land for housing and the Fair Share Policy was initiated to promote and facilitate the production of affordable housing. The Housing First Program is a component of the Housing First Policy, through the Ministries of Housing and Government Services. The latter develops a concept plan on surplus land suitable for residential purposes with input from the Ministry of Housing. The Housing Partnership & Coalitions Program under the Fair Share Policy encourages the private sector to build lower cost rental and privately-owned residential units.

OVERVIEW OF THE PROVINCIAL AUDITOR'S CONCLUSIONS AND COMMITTEE RECOMMENDATIONS

Provincial Auditor's Conclusions

As explained in the audit, all relevant documentation at the Ministry of Housing was examined and interviews and discussions with individuals involved in the hiring process were conducted. Certain conclusions and comments are based partially or completely on those interviews.

The complete text of the Provincial Auditor's report is included in Appendix D. For the purposes of easy reference, the conclusions in the Summary Section of the audit have been included here.

- The process followed was within the parameters of the Management Board directives and guidelines regarding the purchase of consulting services.
- An open competition, the preferred competitive selection procedure, was not held for this position. While the decision not to do so was debatable, the competitive procedure that was followed was acceptable under the directives and guidelines. Some deviations from prescribed practice did occur; however, they were given at least tacit Management Board approval.
- We were concerned with the manner in which the adopted procedure was conducted. In our opinion, it fell considerably short in one significant respect, namely, demonstrating fair and equitable treatment of all considered candidates.
- The Ministry was intent on acquiring the services of Mr. Chiesa as early as the spring of 1988. In its view he was the individual who would best combine the qualifications for the new assignment and the willingness to accept the Ministry's terms and conditions. The Ministry originally proposed hiring Mr. Chiesa on an employment contract.
- As a result of advice from the Human Resources Secretariat and other Senior officials, in early August 1988 the Ministry decided to engage the required services on a consulting contract rather than on an employment contract basis. However, there was little evidence to suggest any change in its conviction that Mr. Chiesa was the right individual for the job. In our view the process followed, culminating several months later in the award of a consulting contract to Mr. Chiesa, was unlikely to have deterred the Ministry from fulfilling its original intent.
- As a result of our review of this matter we could only conclude that the Ministry was intent on engaging the services of Mr. Chiesa for this assignment both at the outset and essentially throughout the entire hiring process. We do not have hard evidence to support our conclusion and the Ministry argues strongly to the contrary. Nevertheless, we feel that it would be very difficult for an impartial observer to conclude otherwise.
- It is also our opinion that the Ministry's choice of Mr. Chiesa was based on a firm conviction that he was the best, if not the only, individual available who combined the qualifications for the position with the willingness to accept the Ministry's terms and conditions.

Committee's Recommendations

The Committee has made several recommendations in this report in an effort to ensure that all applicants to the Ontario Civil Service receive fair and equal treatment, the Management Board of Cabinet guidelines and directives are adhered to at all times, and records on the hiring process are prepared to document decisions under all circumstances.

CANDIDATE SEARCH PROCESS

This section of the Report addresses several subjects which include: how Mr. Chiesa came to be considered; the criteria employed in the selection process; the approach used in candidate identification and the interview process. Mr. Chiesa was formally interviewed on May 18, 1988 by three provincial officials and became an employee of the Ministry of Housing on May 1, 1989.

Preliminary Discussions (1986)

The search process was initially conducted in the provincial and federal governments. As a former employee of Canada Mortgage & Housing Corporation (CMHC), Mr. Chiesa was known by the Deputy Minister of Housing in this capacity. Mr. Chiesa was suggested as a candidate, according to Mr. Church, by a manager in CMHC and the director of housing policy in the Ministry of Housing. Mr. Church had discussed Mr. Chiesa's candidacy with the Minister of Housing in 1986.

Following discussions with CMHC, Mr. Dino Chiesa's proposed secondment to the provincial government had been agreed in principle, but Mr. Chiesa subsequently went to work in the private sector. Mr. Church emphasized that there was not a prior relationship with Mr. Chiesa.

Employment/Salary Contract Proposal

The Assistant Deputy Minister wrote to the Associate Secretary of Cabinet for Executive Resources on June 20, 1988 stating his decision to hire Mr. Chiesa on a three year contract as Special Advisor, Housing Advocacy. The letter explained the decision and copies were sent to the Ministry of Housing, Secretary of the Cabinet and the Deputy Minister of the Human Resources Secretariat.

The Deputy Minister of the Human Resources Secretariat advised the Deputy Minister of Housing of the possible options for the proposed hiring and the necessary approvals. The approval and establishment of the position of Special Advisor, Housing Advocacy by Management Board would also be required.

Fee for Service/Contract Alternative

The Deputy Minister of Housing was advised to proceed on a "fee for service contract" basis and not the "employment contract" basis, and furthermore that several candidates should be considered. The Deputy Minister accepted this direction and further outlined the selection criteria and conditions, including the guidelines.

According to Mr. Thompson's statement, after consultations with the central agencies, it was decided that a consulting assignment was the appropriate method for acquiring technical advice and services on housing advocacy. An internal audit was completed in 1989 on consulting contracts in the Ministry of Housing and it was concluded that the contracts were consistent with Management Board directives.

In response to the Committee's question on the contract decision, Mr. Church outlined the reasons for this approach. He explained that:

while [the Ministry of] Housing originally proposed that this position be salaried, we have accepted the advice that because the position is senior, time-limited - and that was a key factor - and highly specialized, a fee-for-service approach should be used. The aim is to produce policies, processes and methods that can eventually be taken on by our existing program and delivery organizations.

The central agencies' perspective was that the position is closer to a consulting position than to a permanent position.

On the subject of extending Mr. Chiesa's contract, Mr. Thompson explained that this would require Management Board approval as the initial step in a competition. The Board would reiterate the "time-limited" nature of the project and point out that the project should be completed during the specified time period. If it was considered to be a permanent position at the end of the contract, the job would be classified and advertised. Mr. Chiesa would not proceed to permanent status but would be required to follow the normal hiring procedure.

The Committee expressed concerns about the length of government consulting contracts. Mr. Temple explained that there are many two-year contracts, and most do not extend beyond 36 months which is seen as the maximum period for a specific task.

In discussing the alternative of employing a professional consulting firm, Mr. Church pointed out that the Ministry wanted building industry principals only and that such a firm may have difficulties satisfying the requirements regarding the conflict-of-interest concerns, the direct project management background and the experience in concluding complex land projects.

Management Board Approval

Management Board approval is required for consulting services exceeding \$250,000. The Ministry requested approval in August, 1988 for external consultant services in the Housing Advocacy area for a three year period and at a cost not to exceed \$350,000.

Management Board Directives specify the conditions to be met when consultants are retained:

- definition, justification and senior level approval of the assignment;
- development of Terms of Reference;
- establishment of the need for external resourcing; and
- adherence to competitive acquisition procedures.

According to the Auditor the fourth requirement was not achieved in all respects.

The Ministry's submission to Management Board stated that it had successfully completed a search for a qualified individual/consultant presently in the residential housing field and that the Ministry of Government Services had been consulted concerning the acceptability of the candidate selected.

The Ministry briefly outlined the survey and interview process and in September 1988 Management Board approved the hiring of a consultant for a two year period with a one year extension option for a total not to exceed \$350,000.

Mr. Thompson explained that the process used followed Management Board directives and guidelines on the purchase of consulting services. According to Mr. Thompson the Management Board directive dealing with consulting services states that:

consulting services shall be acquired through a competitive process whenever possible with the objective of obtaining the best value for the funds to be expended.

The current Deputy Minister emphasized that the directive does not imply that there is a single, preferred process. Another competitive procedure, acceptable under Management Board Guidelines, is the determination of a number of candidates who have the necessary qualifications and limiting the competition to that selected group. In concluding his opening statement, Mr. Thompson stated that he is satisfied that the Management Board requirements were met, and that the process put in place was reasonable and responsible.

Selection Process

Mr. Chiesa was selected as a possible candidate in 1986. The other four candidates were identified through meetings with senior staff in the development industry associations and the Ministry.

Four candidates, excluding Mr. Chiesa who had been interviewed in May 1988, were interviewed in August 1988. The Deputy Minister of Housing interviewed these candidates, although the Chairman of the Housing Advocacy Task Force was in attendance for only three of the four interviews. The Ministry's criteria were used for the candidate assessments (Appendix C) for the two to three year contract at a salary of \$116,700/annum. In addition the following conditions were required of the candidates:

- "end all development activities in Ontario or in conjunction with any developer who is active in Ontario for the life of the contract"; and
- "fully disclose all direct or indirect interests in real estate in Ontario and in companies with interests in real estate or housing development, and further to disclose all contacts with any such company."

The current Deputy Minister explained at the hearings that it was important that three elements be addressed to ensure that there was equality and fairness in the process. A competitive process was put in place through the following:

- a job definition and a determination of the mandatory requirements that candidates had to meet. Both documents were prepared;
- a process for identifying a number of potential candidates. Knowledgeable staff of the provincial government were canvassed, along with experienced housing industry experts; and
- mandatory evaluation criteria needed to be drawn up.

An evaluation panel was established and members reviewed the list of candidates and the evaluation criteria.

As stated in the audit, 'competitive acquisition procedures' help to ensure that the best value is received for money spent and that fairness is promoted in the marketplace. It is the Auditor's view that an open competition, in which anyone qualified and interested in the assignment can apply, is generally considered the fairest and therefore the most desirable procedure to follow.

The Deputy Minister of Housing felt that as the position required specialized expertise and specific terms and conditions, an open competition would not be useful. Although originally there may have been a necessity to fill the position quickly the time normally required for an open competition would not have presented a problem as the position was not filled until May 1989. As indicated in the audit, Management Board does permit alternative competitive procedures such as the process selected of identifying five potential candidates.

The Ministry was asked if a perceived conflict could arise if the Ministry was not tendering in an open manner. The Ministry assured the Committee that its procedures for tendering on contractual work would not promote a conflict issue. Mr. Chiesa's contract specifically addresses the matter of interference with his contractual responsibilities. Mr. Church felt that the standards related to a candidate's property interests were generic and that the main limiting problem in the candidate search was the absence of people with the specific qualifications in the marketplace.

Mr. Church reiterated that the required skills are exclusively available in the major housing development firms. Furthermore, the specific talents required include familiarity with mechanisms and activities unique to the development industry in the Toronto area.

The Committee expressed an interest in the absence of advertising in the hiring process and the Ministry explained that three major industry associations were contacted and candidates identified. Mr. Church stated that the Management Board guidelines permit a selected search process as being an acceptable competitive process and that an open competition would not have identified suitable candidates.

The Committee questioned whether the search for candidates was too restrictive; excluding potentially qualified candidates that may have been identified through advertising. The opinion was put forth that perhaps the Ministry could not be certain of the potential in the marketplace without some form of advertising directed to those who might potentially be qualified. The Ministry replied that the process employed was within Management Board guidelines and that the options of a wider search and retaining an executive search company were not appropriate, but were considered.

The candidate was required to have Toronto experience, although the lands in question are located across Ontario. While the development industry was represented by the three industry associations canvassed, the presidents of these organizations identified other potential candidates. The Ministry did not speak to all of these people and the associations did not inform their membership of this process. The Committee pointed out that others who did not have direct knowledge of the process might have expressed an interest in the position if it was advertised within a "selection-competitive process."

The Committee pursued the matter of whether the hiring process was appropriate and competitive. The Ministry's position is that the search complied with Management Board guidelines, although the market place and the degree of searching were unusual.

In response to the concern over fair and equitable treatment for all candidates, the Ministry pointed out that there were four qualified candidates including Mr. Chiesa willing to be considered. The Auditor indicated the lack of formality in the interviews, which were in a discussion format and not full board interviews. Ultimately, the Ministry was not able to attract the three individuals, because they were "not prepared to submit to the structure of the job . . .", because of the exclusivity requirement, concern over working in the bureaucracy and reduction in wages.

Mr. Thompson, in his opening remarks to the Committee pointed out that the Auditor's Report states that "the process followed . . . was unlikely to have deterred the Ministry from fulfilling its original intent." The Ministry's objective was to hire someone with the qualifications and the skills equal to or exceeding Mr. Chiesa's, who, at the same time, was willing to meet all mandatory conditions.

Three of the four candidates met the criteria to acceptable standards, although the terms and conditions presented problems. Mr. Chiesa was the only candidate who met the criteria, terms and conditions. Therefore proposals were not requested and a panel was not established for review purposes.

Mr. Thompson pointed out that the Auditor's Report states that, according to the Ministry, only one candidate met the two requirements: able to do the job and willing to accept the Ministry's conditions. The current Deputy Minister explained that one other candidate was deemed to be not suitably qualified after the assessment process; two individuals were unwilling to work within the government bureaucracy and meet mandatory prequalification requirements for divestiture and disclosure; and the fourth person indicated he was not in a position to undertake the assignment on a full-time basis.

In response to the Committee's questions, Mr. Church explained that there was not a preferred "inside track" for a given candidate and the "single-sourcing" approach was not followed. The original interview process for Mr. Chiesa began with a panel of three people. The Ministry suggested to the central agencies to "single-source" and hire him on staff. It was decided that this was not a sufficient test and that a competitive process was preferable. At this point explicit criteria were defined. It was explained that "an open competition" was not used because the experience required is not generally available in the marketplace.

The selection process was guided by three main considerations, namely: conflict of interest concerns; the management component in the contract and the absence of people with the required expertise. Mr. Church elaborated that "the talents we are looking for are exclusively the talents of developers." The Ministry stressed that it was difficult to attract a senior development industry person to the public sector. It was necessary for the Ministry to persuade people to participate in the competition.

Mr. Chiesa's contract (Section 6) states that the consultant shall keep secret and not disclose the information gained in this position. In response to a Member's concerns over the protection of the province's best interest, it was explained that an employee is required to conform with confidentiality provisions applying to permanent civil servants.

Questioned on the hiring criteria, Mr. Church explained that it was an evolving exercise with the original guidelines having been established in 1986. The specific criteria for the competition were set in July 1988. The Committee discussed the evolution of the job criteria between 1986 and 1989 and put forth the general concern that the criteria should not be established based on the qualifications of a given person in a competition. This was not the case, according to the Ministry. Mr. Church pointed out that the Ministry spent several years trying to attract someone into the Ministry who could do the job. Mr. Chiesa's experience was used as benchmark as he had the necessary qualifications. Mr. Church went on to explain the selection process.

But had we found someone in the competitive process--as I say, two of the candidates were people I personally (as a result of my interviews with them) would have been delighted to have taken through to the second stage of the process in the interview panels. Had they been willing to accept the job, then a fully open competition of the sort you have described would have been completed. As it was, it got down to the point, under a competitive process, where only one candidate met all the criteria. I accept your point that it would have been preferable if it were possible. If it were possible, if there was a marketplace, it would have been a preferable process, but that marketplace does not exist.

The Committee pursued the fact that Mr. Chiesa's qualifications were used as a "benchmark". Mr. Thompson is of the opinion that the criteria used did not exclude other potential candidates and that they were not designed for one person. Mr. Church's position is that he did not have one person in mind for the post and that he was encouraged by the number of qualified candidates. It was explained to the candidates that there were other qualified candidates and the candidates were apprised of the fact that the interview process was for consideration, not for employment. Mr. Church communicated his decision not to proceed further in the hiring process to three candidates during their interviews.

The Committee discussed the use of consultants by the Ministry and expressed an interest in the extent to which the public may view the Ontario civil service as closed to qualified and interested people. A Member expressed general concern over the hiring processes in the civil service, particularly for part-time or specified contracts, with the respect to ensuring fairness.

On the basis of the Auditor's concerns, the Committee asked whether the process could have been improved, under the particular circumstances. Mr. Church's position is that:

The documentation should have been more complete and it should have been clearer to the Auditor in reviewing the records that in fact those other three candidates were serious candidates who were strongly in the competition.

In my review of the Auditor's Report, the only real exception I take to the Auditor's Report is that conclusion. I think he was wrong and I think if he managed to reach those conclusions, then something was wrong with our documentation.

The Committee pursued the subject of fairness in the hiring process because the general public may not be aware of the competitive hiring requirements and the search procedures.

The Committee therefore recommends that:

1. Personnel contracts within the Ontario Civil Service should ensure fair access and equal treatment to applicants under all circumstances. Potential employees should have the benefit of a standardized impartial interview process. Consideration should be given to reviewing provincial employment practices in the future with respect to these guarantees for potential employees. This review should include a consideration of practices used in the acquisition of the services of part-time and contract personnel.
2. The Ministry of Housing should review the established hiring guidelines and procedures in an effort to address any existing deficiencies, restricting fair and equal access to potential employees. The Ministry should address the matter of perceived conflicts in hiring; the hiring process should be open in all respects, which may include extensive advertising campaigns and a consideration of candidates with diverse employment experience offering new perspectives.

The Committee may decide to recall the Ministry of Housing after the Ministry has had the opportunity to address any problems and implement changes as required.

Procedural Problems in the Interview Process

The Committee expressed concern over the lack of a job description and formal evaluations which was seen to be a deviation from normal practice. The Ministry explained that written proposals were not required for evaluation

There was only one qualified candidate according to the Ministry. The Auditor described this approach as somewhat unique. Management Board approval was warranted, but direct formal approval was not obtained. The Ministry's intentions were documented in correspondence and outlined in discussions with Cabinet Office, the Human Resources Secretariat, Management Board Secretariat and in the Management Board submission of August 24, 1988. Therefore, Management Board had approved the hiring decision.

The audit identified weaknesses in the interview procedure: only Mr. Chiesa received a full panel interview; all of the evaluations were prepared by the Deputy Minister of Housing and the Chairman of the Housing Advocacy Task Force reviewed and approved those documents for the interviews that he had attended; contrary to the Ministry's submission to Management Board not all candidates received a full panel interview; and the nature and completeness of the interview was questionable with respect to the lack of formality and reference to the details of the contract.

The Auditor concluded that the interviews did not treat the candidates equally. This treatment would be unfair in the event that more than one candidate was qualified and prepared to accept the position. The Auditor found the evidence to be inconclusive, although the Ministry concluded that only one candidate met all conditions and requirements. Mr. Thompson responded to the Auditor's statement that "unequal treatment would result in unfair treatment if more than one of the candidates possessed the necessary qualifications and the willingness to accept the Ministry's terms and conditions." It is the Ministry's position that candidates were treated equally and fairly.

The Ministry agreed with the Auditor's criticism that contrary to the Ministry's submission to Management Board in August, 1988 not all candidates had been rated by all members of the panel. The statement should have stated that the qualified candidate who was also willing to accept the Ministry's conditions was interviewed and rated by the full board. The Ministry's records indicate that of the four qualified candidates, only one was prepared to accept the Ministry's terms. The Ministry accepts the responsibility for the wording as it could have been much clearer, according to Mr. Thompson.

The current Deputy Minister expressed the view that the hiring procedures were appropriate but with respect to the audit, Mr. Thompson stated that:

... if the process is not recorded in such a way that the Provincial Auditor or anyone else for that matter can look at it and be assured that it is okay, then it is not adequate.

The Committee is of the opinion that the existing Management Board guidelines and directives are adequate to ensure the principles of fairness and equity, but that the additional precaution of ensuring the formality of the process through written records would protect Management Board principles and promote adherence in all respects.

The Committee therefore recommends that:

3. The Ministry of Housing should evaluate its hiring procedures from a records maintenance perspective to ensure that all discussions and conversations relevant to a hiring decision are documented. The advertising, candidate interview and selection procedures should be fully documented and available in the event of a dispute and for purposes of an audit.

The Committee was assured that all documentation on hiring would be appropriately recorded in the Ministry in the future.

Hiring Delay

The appointment of the Special Advisor, Housing Advocacy was delayed beyond the intended October 1, 1988 date due in part to the appointment of Mr. Davies, the new Deputy Minister of Housing. The Deputy Minister wanted to review the need for the consultant and the terms of reference. Mr. Chiesa was notified on September 13, 1988 that he would not be filling the position in the near future, although Management Board approval had been received. Mr. Chiesa's contract was signed on January 31, 1989 and the assignment began on May 1, 1989.

The Committee pursued the delay in the hiring of Mr. Chiesa with Mr. Davies. The former Deputy Minister stated that he had waited until he was familiar with the portfolio before making this decision.

LIST OF RECOMMENDATIONS

1. Personnel contracts within the Ontario Civil Service should ensure fair access and equal treatment to applicants under all circumstances. Potential employees should have the benefit of a standardized impartial interview process. Consideration should be given to reviewing provincial employment practices in the future with respect to these guarantees for potential employees. This review should include a consideration of practices used in the acquisition of the services of part-time and contract personnel.
2. The Ministry of Housing should review the established hiring guidelines and procedures in an effort to address any existing deficiencies, restricting fair and equal access to potential employees. The Ministry should address the matter of perceived conflicts in hiring; the hiring process should be open in all respects, which may include extensive advertising campaigns and a consideration of candidates with diverse employment experience offering new perspectives.
3. The Ministry of Housing should evaluate its hiring procedures from a records maintenance perspective to ensure that all discussions and conversations relevant to a hiring decision are documented. The advertising, candidate interview and selection procedures should be fully documented and available in the event of a dispute and for purposes of an audit.

APPENDIX A

**Terms of Reference:
Standing Committee on Public Accounts**

MINISTRY OF HOUSING
AUDIT OF CONTRACT WITH DINO CHIESA

APPENDIX B
Schedule of Hearings



STANDING COMMITTEE ON PUBLIC ACCOUNTS

THURSDAY, 26 OCTOBER 1989

COMMITTEE ROOM 151

A G E N D A

- 10.00 a.m.
1. Election of Vice-Chair
 2. Report from Sub-Committee
 3. Review of Provincial Auditor's Report:
Ministry of Housing, Audit of Contract with
Dino Chiesa
- From the Ministry of Housing:
- Glenn R. Thompson, Deputy Minister
- Gardner Church, Former Deputy Minister
- Bryan Davies, Former Deputy Minister
- Arnie Temple, General Manager, Corporate
Resources Management

APPENDIX C
Candidate Selection Criteria,
Ministry of Housing

1. Knowledge and competence with Government
2. Land Development/Complex Negotiation
3. Credibility/Knowledge of Industry
4. Management: A) Public B) Private Sector
5. Cease Real Estate Business
6. Disclosure
7. Exclusivity

- Demonstrated knowledge of and ability to deal effectively with Government decision making at all four levels, (Federal, Provincial, Regional and Local) relative to land use, housing, development and social and economic policy.
- Demonstrated capacity in development of land to achieve complex results involving many interest groups.
- Exceptional skills and proven success in negotiating development arrangements involving: acquisition and sale of land, public/private partnerships, achievement of social goals, several competing public interests, within a private sector framework.
- Extensive knowledge of and a high level of credibility with the housing development industry in both the Greater Toronto area and the rest of the Province.
- Proven management skills preferably in both the public and private sectors.
- Willingness to end all development activities in Ontario or in conjunction with any developer who is active in Ontario for the life of the contract.
- Willingness to fully disclose all direct or indirect interests in real estate in Ontario and in companies with interests in real estate or housing development, and further to disclose all contacts with any such company.
- Willingness to undertake work for others only if approved by the Ministry.

APPENDIX D

**Provincial Auditor's Report:
"Audit of Contract with Dino Chiesa"**

ONTARIO PLACE CORPORATION

SPECIAL AUDIT



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**The Chairman and Members,
Standing Committee on Public Accounts**

Pursuant to a motion passed by the Committee at its July 6, 1989 meeting, we have completed, and are attaching, a Report on our Special Audit of Ontario Place Corporation.

As you are aware, this audit was also requested by the Ministry of Tourism and Recreation. Accordingly, our Report is being simultaneously submitted to the Deputy Minister.

Toronto, Ontario,
December 7, 1989.

A handwritten signature in cursive script, reading "D.F. Archer".

D.F. Archer, F.C.A.,
Provincial Auditor.

TABLE OF CONTENTS

		Page
SUMMARY	SCOPE AND OBJECTIVES	1
	OBSERVATIONS AND CONCLUSIONS	1
<hr/>		
BACKGROUND		3
<hr/>		
COMMENTARY	<i>MANAGEMENT DECISION-MAKING PROCESS</i>	
	Overview	4
	Significant Change in Emphasis	4
	A More Hands-on Chairmanship	5
	Accelerated Decision-Making	5
<hr/>		
	<i>CONTRACT MANAGEMENT-CONCESSIONS</i>	
	Overview	6
	Contract Letting - Effective June 30, 1988	7
	Contract Letting - Effective 1989 Operating Season	9
<hr/>		
	<i>CAPITAL PROJECTS MANAGEMENT</i>	
	Overview	13
	Weak Accountability for In-Year Capital Spending	14
	Compressed Time Frames Limit Competition	17
<hr/>		
	<i>HUMAN RESOURCE MANAGEMENT</i>	
	Overview	18
	Significant Staff Turnover	18
	Informal Hiring Process	19
<hr/>		
	<i>OPERATING EXPENDITURES</i>	
	Policies and Procedures Adhered To	19
	Uniforms Selection	19
<hr/>		
	<i>OTHER MATTERS</i>	
	Consultant Hiring	21
	Unwritten Sponsorship Agreement	21
	Chairman's Remuneration and Expenses	22
	Unusual Payment to Charity	22

ONTARIO PLACE CORPORATION

SPECIAL AUDIT

SUMMARY

SCOPE AND OBJECTIVES

On June 14, 1989 the Deputy Minister of Tourism and Recreation requested a special audit of Ontario Place Corporation. Specifically:

"It is felt that at this time a comprehensive audit, including an in-depth review of the Corporation's management decision-making processes would be worthwhile. In particular, I refer to the Board's responsibilities and inputs regarding purchasing processes and contract management, decision-making authorities, and overall accountability related to the management of the Corporation's operations."

On July 6, 1989, the Standing Committee on Public Accounts passed a motion requesting a similar audit.

In view of the increased public attention focused on the Corporation and its former Chairman, Mrs. Patricia Starr, our audit examined the more significant decisions and transactions made during her two year tenure from June 1, 1987 to June 11, 1989.

OBSERVATIONS AND CONCLUSIONS

Management Focus

During Mrs. Starr's tenure at Ontario Place, deficit reduction was a principal management focus. The Corporation did, in fact, reduce its operating deficit by \$1.4 million for the year ended March 31, 1989. This was achieved through a combination of expenditure reduction and revenue increases.

For the year ended March 31, 1990 (1989 operating season) the Corporation undertook to further improve its revenue picture by privatizing all retail outlets, by increasing concessions rents, offering better quality food and by stressing creativity and originality. The full impact of these efforts cannot yet be assessed.

Management Style

Associated with the deficit reduction focus was a desire to produce rapid and visible results, a desire which contributed to accelerated decision making by the Corporation and to a much more hands-on approach by the Chairman. It was evident throughout that the Chairman lacked confidence in existing staff, a factor which contributed to poor morale, high turnover, and strained staff resources. These circumstances resulted in many significant decisions being reached in an informal manner, with related planning and rationale being much less developed and supported than would normally be expected of a public section institution.

Administrative Practices

For the most part management operated within the broad authority granted to the Corporation. However, because of the informality and pace of decision-making during the period, we found that the processes followed did not ensure that moneys were well spent or that fairness and equity were demonstrated. More specifically:

Concession Letting

- The privatization of fast food operations in the middle of the 1988 operating season was unusual. Action was taken so quickly that the contract had to be awarded without competition and the necessary approval from Management Board of Cabinet had to be obtained within a week of the request. The decision did not result in improved financial performance from the fast food operations for 1988.
- The process followed in the privatization of all food and retail operations for the 1989 and future operating seasons was so informal that we could not determine whether all potential operators were treated in a fair and equitable manner.

Capital Planning

- The current planning process for capital projects is subject to tight time constraints imposed by the weather between operating seasons and the uncertainty of the timing and amount of capital funding from the Ministry. The situation is aggravated with respect to in-year capital projects such as those undertaken in the year ended March 31, 1989. Our primary concerns were that:
 - cost estimates were superficially prepared resulting in substantial over spending and delays or revisions to planned projects;
 - accountability to both the Board and the Ministry for overspending on in-year capital projects was inadequate; and
 - compressed time frames for tendering major projects may limit competition and favour contractors previously used by the Corporation.

Human Resource Management

- High turnover during the last two years meant that hiring procedures were less formal in order to meet operating season pressures. Many positions were filled by contract staff with limited competition. Advertisements and interview boards involving personnel professionals were not used routinely as in the past.

Operating Expenditures

The Corporation generally adhered to the policies and procedures established for the acquisition of goods and services. However, we felt that an adequate selection process was not followed for the acquisition of uniforms for the 1989 operating season.

Other Matters

A number of other transactions were examined to address concerns raised publicly by the media. In brief, our examination revealed no instance of abuse or misspending by the Corporation staff or board members, including the Chairman.

BACKGROUND

Ontario Place Corporation was created by authority of the Ontario Place Corporation Act in 1972. As a Crown agency of the Ministry of Tourism and Recreation, Ontario Place provides cultural and recreational entertainment to over two million visitors annually.

The Corporation is under the management and control of a Board of Directors composed of at least seven but at most thirteen members. These members, including the Chairman, are appointed by the Lieutenant Governor in Council. The Deputy Minister of Tourism and Recreation is an ex-officio member of the board.

On average, admission, parking, attractions and other revenues cover approximately 80 per cent of the annual operating expenses. Operating grants from the Ministry of Tourism and Recreation are required to subsidize operating costs each year. The Ministry also provides funding for capital projects. Ministry funding for the last four fiscal years was:

March 31	Operating Grant (\$millions)	Capital Grant (\$ millions)	Total (\$ millions)
1986	2.9	5.3	8.2
1987	3.4	1.5	4.9
1988	4.8	1.9	6.7
1989	2.6	2.8	5.4

COMMENTARY

MANAGEMENT DECISION-MAKING PROCESS

Overview

The respective roles and responsibilities of the Minister, the Ministry, the Board of Directors, and the general manager of the Corporation are defined in a memorandum of understanding signed by both the Minister and the Chairman of the Board of Directors and approved by Management Board of Cabinet. In brief, the Board of Directors must direct and control the management of the Corporation within the policies approved by the Minister. The general manager is accountable to both the Board and the Ministry for the day to day operations of the park. He is also responsible for the preparation of plans and performance reports. The Ministry provides financial and administrative support as specified in the memorandum.

Under the Act, admission, parking, and attraction prices are set by regulation and require the approval of the Lieutenant Governor in Council. The corporation must also adhere to the administrative directives and guidelines established by Management Board of Cabinet unless more restrictive directives and guidelines are established by either the Ministry or the Board of Directors.

Significant Change in Emphasis

Since inception successive boards have struggled with the often conflicting objectives of providing cultural entertainment at affordable prices while attempting to achieve financial self-sufficiency with respect to the operating budget. This latter objective is clearly set out in the memorandum of understanding with the Minister. The ability to operate without government subsidies depends not only on the ability to manage resources efficiently but also on the ability to secure government support for price increases and capital renewal.

Mrs. Patricia Starr was Chairman of Ontario Place Corporation for the period June 1, 1987 to June 11, 1989. It is clear from the outset that the new Chairman wished to place a greater emphasis on achieving financial self-sufficiency than had previous Boards. As recorded in the Board minutes of October 29, 1987, the chairman stated that, "in her discussions with representatives of the Government, concerns were expressed over the increasing deficits at Ontario Place and the potential of expanding subsidies."

Many decisions and changes made during the tenure of Mrs. Starr resulted in improved financial performance. Results had improved by about \$1.4 million for the year ended March 31, 1989 (see Appendix I). The most significant actions contributing to this improvement were:

- Efforts to reduce discretionary expenditures such as advertising, programming/entertainment, and maintenance. Overall, operating expenditures were decreased by about \$750,000.
- Approval was obtained to increase fees for admission, parking, and the marina. However, because of a drop of about 9 per cent in attendance, revenues from attractions, food services, and retail sales were down, thus offsetting part of the gain from the fee increases. The net result was a revenue increase of \$650,000.

Other decisions made during the two year period included the privatization of all retail sales and fast food operations as well as a significant increase in the rental rates charged to concessionaires. Although the privatization of fast food during the 1988 operating season did not improve financial results for the year ended March 31, 1989, it is too soon to assess the ultimate impact of these decisions on future results.

The recently completed strategic plan approved by the Board of Directors in January 1989 but not yet approved by the Ministry retains self-sufficiency as an objective. To quote the plan: "The Corporation should be free to implement a business-based strategic plan that will, in less than five years, eliminate the current operating deficit and significantly enhance attendance."

A More Hands-on Chairmanship

Our interviews with past and present Board members, as well as the minutes of Board of Directors' meetings, indicate that Mrs. Starr was much more actively involved in the day to day management and activities of the Corporation than were previous chairmen. Many remarked that she was acting more as a general manager than a chairman. For example, negotiations with sponsors and special event operators were conducted almost exclusively by Mrs. Starr. As well, she often attended management committee meetings.

Although management style and enthusiasm no doubt contributed to her more active involvement in the decision-making process, there were a number of other reasons.

- From very early in her tenure it was clear from both public statements and Board minutes that Mrs. Starr did not have confidence in the existing management at Ontario Place. Management reports to the Board soon became Chairman's reports.

Upon her request, an audit of the management and internal control processes of Ontario Place was performed by the Internal Audit Branch of the Ministry.

- A number of senior employees left the Corporation during the period, necessitating more active participation by the Chairman. In particular, the General Manager resigned in March, 1988. An acting General Manager was brought in for a period from April to July 1988, until a proper search and competition could be held. The new General Manager was not appointed until August 1988.

It should be noted that the Chairman's active involvement had the support of the majority of the Board, including the Deputy Minister.

Accelerated Decision-Making

Another characteristic of the decision-making process during the two year period was that it was compressed in a number of cases. The Chairman clearly was anxious to make changes rapidly and demonstrate positive results. As well, management and the Board argue that changes and capital investment must be

made annually in order to maintain or improve attendance in an increasingly competitive tourism industry. Consequently, a number of significant decisions were made and actions taken during the two years of her tenure at Ontario Place. In the remaining sections of this report we describe and assess the processes followed in reaching and implementing these decisions.

CONTRACT MANAGEMENT-CONCESSIONS

Overview

Prior to the 1988 operating season (May - September) Ontario Place Corporation operated six retail and eight fast food outlets on its own. In May 1988, a new fast food outlet was constructed and operated by Corporation staff, bringing the total of such fast food outlets to nine. The Corporation also owned a sit-down restaurant (Trillium Restaurant) which was operated under a management agreement with a private firm on a year round basis.

In addition to these owned and operated facilities, the Corporation also leased concessions to outside operators for the running of six other sit-down restaurants and four other fast food outlets. Except for the Trillium Restaurant, all retail and food operations were open only during the operating season.

The composition of the retail, fast food and restaurant outlets was affected by the following Board decisions:

- Effective June 30, 1988:
 - all of the nine fast food outlets operated by the corporation were to be privatized (i.e. converted to concessions).
- Effective 1989 Operating Season:
 - one of the sit down restaurants was to be converted to a fast food fair with five outlets.
 - one retail outlet and seven fast food outlets were to be eliminated. In addition, two fast food outlets were to be converted to retail (specialty store) concessions.
 - the remaining five retail outlets were also to be privatized (i.e. converted to concessions).

As a result of these decisions, all retail, fast food and restaurant outlets, with the exception of the Trillium Restaurant, would be leased and operated by concessionaires. The outlets would consist of seven retail stores, five fast food operations (one of which would be a food fair with five outlets), and five sit-down restaurants.

The Trillium Restaurant would continue to be owned by the corporation and operated by a private firm under a management agreement. This agreement came up for renewal in December 1988 and a public tender was called. However,

the existing agreement was extended by the Board until September 1989, after the successful bidder requested to be relieved of their commitment because they were no longer interested in operating the restaurant.

Appendix II summarizes the foregoing food and retail outlet changes.

Contract Letting - Effective June 30, 1988

On January 28, 1988, a previously established Trillium Selection Committee was reconstituted as a Food Services Sub-committee with three representatives from the Board (including Mrs. Starr), two municipal politicians and one outside accountant as members. The Sub-committee was to review the delivery of all food services at Ontario Place.

The Food Services Sub-committee concluded that the Corporation was unable to operate the nine fast-food outlets as there were problems staffing the facilities, senior staff were spread too thin, and financial management needed improvement. This was formally reported to the Board on June 23, 1988. At this same meeting, a proposal dated June 21, 1988 from a private firm to manage the Corporation's fast-food was discussed and accepted by the Board.

Because of time constraints, on June 24, 1988, the Corporation sought the necessary approval from Management Board of Cabinet to award the contract to the private firm, without tender, for the period June 30, 1988 to September 6, 1988. The Corporation indicated that a comprehensive food services plan was being developed for next operating season and that a public tender process would be then be followed. Approval was obtained from Management Board on June 28, 1988.

As a result, the Corporation turned over the management of the nine fast-food outlets to the private firm from June 30, 1988 to September 6, 1988.

Unusual Circumstances

Our review of the process revealed that:

- No cost/benefit analyses or projections of Ontario Place's food operations were conducted to help support the decision to privatize. No alternatives were presented to the Board for consideration and no discussion of alternatives appeared in Board minutes.
- The eventual operator employed a consultant, who had previously done consulting work for Ontario Place, to obtain sales figures and other essential information in order to prepare their proposal. At the time the consultant requested the information management was not aware that privatization was being considered. The operator had been approached by the Chairman.
- The agreement was originally drafted in May 1988, to be effective for a period of over five years. However, the Deputy Minister of Tourism and Recreation advised the Corporation that Management Board would not approve a contract of this length without a competitive process. As previously mentioned, the agreement eventually signed covered only the remainder of the 1988 operating season, and was not renewed.

It was unusual to see the strategic move of privatizing the Corporation's fast-food outlets taken in the middle of the 1988 operating season. Also unusual was the fact that the full Board was first presented with the proposal on June 23, 1988 and a private firm took over the operations within one week on June 30, 1988. Furthermore, we were surprised to see that the privatization occurred only one month after the Corporation had constructed a new fast-food outlet for operation by its own staff.

Management and the Chairman stated that the decision to privatize the fast food outlets was not made on June 23, 1988. They maintained:

- . The initial proposal from the private firm was received one month earlier, on May 25.
- . Negotiations were conducted by the Chairman and staff from early June 1988.
- . Because of time constraints, the Chairman contacted individual Board members by telephone and obtained their approval of the terms proposed by the private firm. The Board meeting on June 23, 1988 was only to endorse what individual members had already approved.

Operating Results

Our analysis of the fast-food privatization results for 1988 indicated that the Corporation did not do quite as well as the previous year. Further we noted that:

- . The Corporation had not yet received what it was entitled to under the agreement.
 - The Corporation was to receive the higher of either a guaranteed amount or a fixed percentage of revenues generated as rent. However, the rent received was actually \$27,000 less than the guaranteed amount.
 - All salaries and benefits of the Corporation's seasonal fast-food staff were to be assumed by the private operator. However, we noted that the Corporation had not been reimbursed for about \$47,000 of employee bonuses paid as an incentive for staff to work until park closing.

Management advised us that it is trying to negotiate a settlement for these amounts.

- . As already stated, in May 1988 the Corporation constructed a new fast food outlet which was then turned over to the private firm. About \$40,000 was spent on equipment for this outlet, yet management auctioned off the equipment for just \$6,500 in March 1989.

Sale conditions required payment "within 72 hours of written confirmation of award." However, management advised us that auction proceeds were not received until October, 1989.

- . Also in May 1988, the corporation spent \$12,000 renovating another fast food outlet before turning over the operation to the private firm. At the end of the 1988 season, this outlet was converted to a specialty retail store.

Contract Letting - Effective 1989 Operating Season

Food Concessions

Two restaurant agreements do not expire before October 31, 1996. Concessions for four other restaurants and thirteen fast food outlets came up for renewal in October 1988. However, in August 1988, the Corporation decided to convert one of the restaurants into a large multi-cultural food fair. In October 1988, the Board also decided to demolish seven fast food outlets due to overcrowding and an oversupply of services in one area. Two additional fast food outlets were to be converted to retail specialty stores. These decisions effectively reduced the number of new agreements to 8: 1 fast food fair, 4 fast food outlets, and 3 restaurants.

As early as February 12, 1988, the Chairman of the Board met with existing food concessionaires to inform them that Ontario Place was heading in a new direction. She outlined specific expectations such as increased rents, an emphasis on quality of food and services, and a future lease term of three to five years.

Near the end of August 1988, the new General Manager contacted existing concessionaires whose contracts were expiring. At that time, they were given an exclusive opportunity to renew by submitting a proposal which would meet the corporation's criteria for originality and capital investment and by agreeing to the increased rental rates.

On October 6, 1988, management outlined selection criteria for food concessions to the Board. The General Manager stated that "all current concessionaires had been asked to submit conceptual plans and initial renderings for their particular outlets, as well as investment capital capabilities, financial records and a list of the professional on-site management team." The Board directed management to inform concessionaires that the corporation would be requesting proposals from potential new and interested operators in cases where initial proposals were not acceptable.

In fact, only one (a restaurant) of the six current concessionaires submitted a proposal which satisfied the Board and consequently, proposals were sought for the other two restaurants and the fast food outlets.

Late Start for Proposal Call

Ideally, the renewal-new proposal process should have started much earlier. By not inviting new and interested operators for proposals until October for example, most potential concessionaires were not given the opportunity to observe food operations during the operating season. The opportunity to do so may have encouraged more interest from potential concessionaires. In addition, the presence of other interested competitors may have also encouraged existing concessionaires to be more competitive in meeting the the Corporation's requirements for contract renewal.

Management explained that the late start was due primarily to two reasons:

- an interim general manager was at Ontario Place from April of 1988 until the position was filled August 3, 1988 and a lot of other senior staff were new to the organization; and

- management wanted to give existing concessionaires every possible chance to meet the required criteria and win a renewal term.

Again, management and the Board's desire to make changes and improve food services meant that proceeding late was still preferable to extending the contract of existing concessionaires and delaying changes until the following season.

Informal Selection Process

Currently, no specific government directives or guidelines exist regarding tendering procedures for concession contracts or licences. According to the memorandum of understanding, "the officers of the Corporation may negotiate and enter into or amend contracts relating to food service and other concession operations . . . subsequent to consultation with the Corporation's Board of Directors." Consequently, the corporation is free to adopt a process which is considered suitable in the circumstances.

In the absence of government guidelines or written corporate policies regarding concession letting, we assessed the process followed using general government principles. Specifically:

"Equity is the cornerstone of every government policy that deals with the awarding of contracts. The private sector expects equal and fair treatment when bidding for government business. It is the manager's responsibility to be fair to all bidders and also to demonstrate that he or she has been so when awarding a contract. Some of the ways in which equity can be achieved are:

- by distributing comprehensive terms of reference;
- by holding briefings that allow all competitors to gain more information about the contract, the organization sponsoring it and the selection procedure;
- by respecting all deadlines associated with the competition; and
- by distributing information on the selection criteria to all competitors well in advance of their presentations to the election panel."

Our review revealed that the concessionaire selection process was so informal that it was impossible to determine the extent to which these conditions of equity were met. We have specific concerns with regard to the invitation of potential operators; the distribution of the selection criteria information package; and the evaluation of proposals.

Invitation

In seeking approval for the sole-sourced 1988 fast food concession agreement the Corporation had indicated to Management Board of Cabinet that the Corporation intended to proceed with a public tender for future privatization efforts (page 7). In addition, during a Board meeting on July 21, 1988 the former Deputy Minister raised the point that "a public call shouldn't be discouraged, as opposed to a proposal call, which on its

own, might lead to public criticism from those who were not invited." However, the Corporation evidently concluded that a public tender was not appropriate in the circumstances and, instead, chose an invitational tender approach to select potential operators.

Documents provided for our examination indicated that 30 potential operators, including five existing concessionaires, were invited to bid for the 7 remaining food concessions. Invitees were identified by members of both management and the Board. Invitations were made at various times, usually by telephone. In addition to the five existing concessionaires, only six of those invited were interested enough to submit a proposal. Some operators competed for more than one outlet. However, for each of the 7 concessions, there was only one outside operator competing against the existing concessionaire.

To determine why the majority (19) of the invitees did not submit proposals we reviewed the concessionaire contact files maintained by management and contacted a number of those invited:

- 10 of the 19 invited were neither experienced nor interested in seasonal food operations. Management stated that these potential operators had expressed interest initially but were no longer interested.
- 5 of the 19 indicated interest, however, there was no evidence of follow-up by management with these companies.
- Files did not exist for 2 of the 19 companies and management could not remember who, at these firms, they had contacted or were contacted by.
- Two firms stated that, although they were very interested in obtaining a concession site, they were not given enough time to prepare their proposals.

Some firms were informed that they had to submit a proposal within ten days or two weeks. Other firms were given much longer to prepare. Indeed, three of the successful bidders who won 6 of the 7 available food concessions did not submit a formal proposal until January 1989. Management stated that anyone who asked for more time to prepare a thorough proposal was given an extension.

Information Package

With respect to the distribution of selection criteria information package, we noted:

- A comprehensive information package, including detailed requirements for a preliminary proposal, was not provided to interested parties. Instead, management gave a rough, one-page handwritten list of criteria to the existing concessionaires and to some of the interested firms.
- Criteria sometimes differed from one handwritten list to another, even for the same site.

However, management maintained that any interested party that visited OPC received a tour and was given information on attendance records, the proposed lease agreement and what management wanted for the future of Ontario Place.

Management also stated that the process was less formal because:

- . the new general manager had just arrived in August and had to get the process going very quickly; and
- . detailed specifications were not appropriate because they were primarily seeking creativity and originality from those invited.

Evaluation

Evaluation of proposals was assigned to the Food Services Sub-committee, specifically, the Chairman.

With respect to the evaluation of proposals we noted supporting documentation contained many anomalies.

- . The rankings for each concession location were documented on forms signed and dated December 21, 1988, yet:
 - . One fast-food operator submitted an initial proposal letter dated January 2, 1989. This was the very first correspondence on file from this operator. The ranking sheet shows this operator as one of two competitors. This operator won the competition.
 - . The first correspondence from another fast-food operator was dated January 12, 1989 expressing an initial interest in obtaining a concession. Yet this operator is shown on the ranking sheet as being the highest rated. A full, comprehensive proposal from the bidder was not submitted until January 25, 1989.
 - . Ranking forms were completed by two senior managers for review by the Food Services Sub-committee. However, the Chairman of the Food Services Sub-committee advised us that she was unaware such ranking documents had been prepared.
 - . The selection criteria for evaluating proposals from all current and potential concessionaires included the investment capital capabilities and financial stability. However, we found no evidence to verify that management had attempted to substantiate such information.

Most of the concessionaires were approved by the Board in January 1989 except for three of the fast food outlets. The Board indicated at their January meeting that management's decision on the remaining three outlets would have to be ratified by the full Board at the next meeting. However, the decision to grant all three outlets to the same operator who had been already awarded the food fair concession of five outlets was never ratified by the Board. Management maintains that this was an oversight but that Board members were fully aware of the situation.

All of the seven concessions were awarded to new operators. The corporation signed agreements with two operators for two sit-down restaurants; one agreement with one operator for a fast food outlet; and four agreements with another operator for four fast food concessions, one of which was a food fair having five outlets.

The Overall Process

Management strongly maintain that the process followed was more than required by any formal policies or rules of the government. They believe that the selection process was fair and reasonable in the circumstances. Documentation was not a priority under very tight time constraints.

The process followed was within the broad authority granted to management in the memorandum of understanding. However, in our opinion, the process was too informal; open to criticism; and certainly less than would be expected of a public sector institution.

We recommend that the Board develop a written policy to govern future concession contract letting, based on the government's general principle of equity.

Retail Concessions

The process for letting the seven retail concessions was simpler because there were no existing concessionaires to consider. Based on our review, we were generally satisfied that a competitive process was followed. Specifically,

- there were at least three competitors for each site;
- written invitations for proposals were sent to interested parties;
- a common deadline for responses was established; and
- the Board of Directors was involved in the study of proposals in depth.

However, once again the ranking sheets were completed by the two senior managers and were dated December 21, 1988 yet at least one competitor had already been notified on November 24 that their proposal had been rejected. Management stated that the proposals were evaluated much earlier than the ranking sheets suggest.

CAPITAL PROJECTS MANAGEMENT

Overview

Planning for capital projects at Ontario Place is made difficult because:

- Much of the work must be completed between operating seasons when weather permits only about two months in the fall and two months in the spring for major outdoor construction. Thus, capital projects require advanced planning either one year ahead or during the operating season in order to permit construction to start as soon as the park is closed for the season.
- The Corporation annually must cope with the uncertainty of both the amount and timing of capital grants from the Ministry. The Corporation cannot commit funds to capital projects until funding has been approved.

To illustrate:

- In July 1987 Ontario Place requested \$3.1 million of capital grants from the Ministry for the fiscal year ending March 31, 1989. Much of the capital work was planned for completion prior to the park opening in May, 1988.
- In December, 1987 an amount of \$1.7 million was approved by the Ministry. This amount was substantially less than requested. In addition, the date of approval left little time for tendering and construction prior to May 1988.

Given the government's capital funding approval schedule, capital expenditure would be better applied to projects planned to begin in the fall of that same year (e.g. Fall of 1988). To permit such a schedule for future, the Corporation would have to forego capital improvements for one year; a decision which management and the Board argues would hurt the Corporation's ability to maintain or improve attendance.

Weak Accountability for In-Year Capital Spending

We were concerned with two factors in particular:

Spending Not As Authorized

In October 1988, management identified a number of new winter capital projects that they would like to complete before March 31, 1989. The timing of this decision further compounded the problem of an already compressed capital planning process.

With Ministry support, a submission to the Management Board of Cabinet was made on November 15, 1988, requesting an additional \$1.6 million of in-year spending for the following five essential capital projects:

<u>Project</u>	<u>Construction & Equipment</u>	<u>Specif. & Eng. Design</u>	<u>Total</u>
1) Centre Entrance	\$ 450,000	\$ 49,000	\$ 499,000
2) Centre Plaza & Children's Village	300,000	34,000	334,000
3) Coach Parking/ Landfill	350,000	39,000	389,000
4) Updated Parking System	150,000	28,000	178,000
5) Power Plant Improvements	<u>180,000</u>	<u>20,000</u>	<u>200,000</u>
	<u>\$ 1,430,000</u>	<u>\$ 170,000</u>	<u>\$ 1,600,000</u>

On December 13, 1988, Management Board approved the request provided that the Ministry could absorb this amount internally. However, because the Ministry could not provide the full amount, management was asked to review the list of projects to be completed. On December 22, 1988, management indicated that the five projects would be tendered and about \$1.1 million of the work would be completed before March 31, 1989. The balance of \$500,000 of work would be carried forward to May 1989 when new funding would become available.

On January 11, 1989, the Ministry approved the re-allocation of \$817,000 to Ontario Place for the five essential projects. On February 14, 1989, the Ministry provided another \$300,000 to the Corporation, bringing the total in-year capital grants to \$1.17 million.

The in-year funding was approved by Management Board of Cabinet and provided by the Ministry on the condition that it be spent on the projects specified and that the money be spent by March 31, 1989. This was clearly set out in a memorandum from the then Deputy Minister. However, once it became apparent to management that the planned projects could not be completed by March 31, 1989, staff were instructed to identify other needed projects and items that could be completed or acquired by March 31, 1989. In fact, less than \$500,000 of the \$1.17 million of in-year funding had been spent on the proposed projects. The balance, about \$700,000, was spent on a variety of smaller projects and items including audio equipment and instruments, computer equipment, and concession area improvements.

In spending the \$700,000 on these smaller projects and items, management recognized that they had not complied with the Ministry's condition that the in-year funding be spent only on the specified projects. However, they regarded such action as only a technical breach since the items purchased had been included in a revised 1989/90 capital budget submitted to the Ministry in January, 1989, requesting an additional approval of \$2.6 million. However, as at March 31, 1989, when the Corporation had already spent the \$700,000, there was no indication from the Ministry that the additional request of \$2.6 million would be approved. Indeed, actual approval subsequently granted to the Corporation on April 5, 1989 provided only an amount of \$1.2 million.

Management indicated that the decision to spend in-year funding on other items was not made in isolation of either the Board of Directors or the Ministry. However, the Deputy stated that he was not informed that the Corporation had already spent a considerable amount of the in-year funding on items unrelated to the five essential projects for which approval was granted. The Chairman indicated that she was not informed until April 1989 that in-year capital funding was used on any items other than what were approved.

Superficial Cost Estimation

When the Centre Entrance project was tendered in March, 1989, it was combined with a Riverwalk (which was part of the Centre Plaza and Children's Village project) so that the estimated construction cost for the combined project was considerably less than \$750,000.

The tendered construction price for the combined project was \$2.1 million. With the help of OPC architects, OPC subsequently was able to reduce the tender price by \$500,000 to \$1.6 million through a number of deletions and modifications to

the original specifications. However, some of the deletions, such as a bus loop for the Centre Entrance and some new gas lines, were added back during construction. As a result, the actual invoices submitted by the construction company for the Centre Entrance/Riverwalk project totalled over \$1.8 million. This amount did not include many other items such as design fees, demolition work, lighting fixtures, and ticket booths which were purchased separately.

As the actual amount to the above contractor alone was over \$1 million more than the estimated construction costs for the project and \$200,000 more than the total costs estimated for the five essential capital projects, we questioned the process of cost estimation. Management indicated that although the estimates had been prepared for Board consideration and approved in October 1988, the process was not as thorough as usual because of the uncertainty of Ministry funding. In fact, the cost estimation was really their best guess.

Although the Chairman maintains that in October the Board had instructed management to proceed with preliminary designs and drawings in order to firm up estimates, management did not wish to commit significant effort to the project until funding had been secured from the Ministry.

One consequence of the underestimate was that the remaining essential projects had to be either scaled down or substantially delayed.

Management indicated that the Chairman was informed as early as March 7, 1989 of the significant cost overrun. However the Chairman maintained that she was not informed of any significant cost overrun until it was too late for any corrective action. There was no mention of any cost overrun even when management provided an update on capital projects to the Board on March 16, 1989. In fact, the Board expressed concern that they had not been informed of the significant cost overrun on the Centre Entrance/Riverwalk project until April 27, 1989. The project was already close to completion and the Park was due to open in about three weeks time.

Our follow up discussion with the then Deputy Minister of Tourism and Recreation revealed that he had not been informed of the cost overrun until a call from the General Manager on March 29, 1989. On that day, the General Manager informed the Deputy Minister that "the tendered costs on a number of their essential capital projects had come in considerably above the estimated costs." He indicated that "the total costs of the 1989 capital projects would exceed the funds allocated for the current year and next year by at least \$600,000."

We also noted that, unlike for other capital projects, financial reports to the Ministry and the Board did not break down the in-year capital projects such that spending and estimates could be compared and explained for each project. As late as November 9, 1989, management had not been able to provide us with such an analysis.

Consequently, we feel accountability to both the Board and the Ministry was not adequate with respect to the in-year capital projects for fiscal year ended March 31, 1989.

Compressed Time Frames Limit Competition

We found the tendering process with respect to capital projects to be compressed for a number of significant projects. With regard to the Centre Entrance/Riverwalk project, for example, we noted:

- Tender requests were not sent to the seven selected construction companies until March 15, 1989, with March 27, 1989 established as the closing date for submission of bids. Only one bid was received for \$2.1 million for the combined project. Of the six that did not submit a bid, four indicated that they were unable to submit a tender in the time requested, citing workload or tight schedules.
- One of the seven invitees documented in considerable detail why his firm was unable to submit a tender. He indicated in his letter to OPC that the specifications and drawings provided to his firm on March 15, 1989 had many inconsistencies. Revised drawings were delivered to his firm late in the afternoon of Thursday, March 22, 1989. Although the revisions solved some of the problems, many remained. While his staff had worked up to bid closing time (2:00 p.m. of March 27, 1989) on the following Monday, they had not been able to obtain firm quotes from subcontractors to finalize the price in the short time available.

The invitee suggested that more time should be made available to the Corporation's architect to prepare the design with "better checking and more complete detailing." Additionally, a longer tender period should be planned to allow more time to answer questions and to solicit sub-trade quotes. Ontario Place would get "better competition and thus lower tender prices."

Our examination of tenders for other major capital projects revealed similar concerns:

- Replacement of heat ducts and air conditioning in several restaurants was planned in advance for year ended March 31, 1989. However, tender invitations were sent to five potential suppliers, giving them less than one week (6 days including a weekend) to respond with a bid. Only two bids were submitted, with the lower bidder having a price of over \$550,000. One invitee indicated that he could not bid because there was not enough time. The others simply did not respond.
- Major restaurant renovations were done in May 1988 and interested bidders were given only seven days to respond. Several bidders refused to bid. There was only one bid.
- Invitations were sent to five potential suppliers on October 28, 1987 (a Friday) for the construction of the Mini golf capital project. Bidders were given up to 10:30 a.m. on the following Thursday, November 3, 1987, to respond. Only two bidders, who had previously done work for the Corporation, were able to submit a bid for the \$250,000 project. One supplier who was unable to bid indicated that "due to the short tender call and early closing time," his firm could not get a price from two sub-trades (electrical and mechanical) on time to submit a tender.

Such compressed time frames tend to limit competition and give a significant advantage to contractors who have previously done work for Ontario Place. In fact, many major projects completed in the last two years were won by contractors who had previously done work for Ontario Place.

We compared tendering practices with those followed by the Niagara Parks Commission, another agency of the Ministry of Tourism and Recreation. At the Commission, contractors are normally given a minimum of three weeks to respond to a tender call, even for smaller projects. Most projects are handled by open public tender as opposed to an invitational public tender. Either approach is permissible.

Nevertheless, management maintains that the time frames currently allowed to bidders is sufficient and typical for the industry.

We recommend that Ontario Place and the Ministry jointly establish a means of ensuring that capital projects can be reliably planned and estimated in sufficient time to permit longer tendering and construction periods.

HUMAN RESOURCES MANAGEMENT

Overview

Payroll and employee benefit expenditures at Ontario Place amounted to approximately \$7.2 million in each of the last two fiscal years.

The corporation employs about 80 full-time employees year round, including the occasional use of contract staff. In the past, about 800 seasonal staff and summer students were hired during the operating season. However, as a result of the privatization of fast-food operations, about 150 less students worked for the Corporation during the 1988-1989 fiscal year. This represented a saving of about \$365,000 in payroll and employee benefit expenditures.

Significant Staff Turnover

During the two year tenure of the Chairman 58 full-time employees (including 11 full-time contract employees) terminated their services with the Corporation. This is a significant number of resignations, particularly in view of the fact that the Corporation previously averaged less than 10 resignations per year, mostly from security staff. Given only 10 of the 58 resignations came from security staff, the turnover of security staff was considered normal during the past two years. However, staff turnover in other areas such as marketing and finance was exceptional, especially at management staff level. Such high turnover made it much more difficult for staff to implement major Board decisions in a timely and professional manner. Indeed, this no doubt contributed to the compressed time frames and less formal procedures we have noted.

Although staff departed for a variety of reasons, our interviews with former and existing staff, as well as Board members cited low morale as a significant factor that led to the exceptionally high level of turnover during the two years.

Informal Hiring Process

Given the high level of turnover, the need to meet operating season pressures quickly, and the fairly lengthy time required to fill positions in accordance with government procedures, the hiring process during the two-year period was much more informal than in prior years. Specifically, we observed that:

- Many vacant positions were filled with contract staff without competition. For example, in the Marketing and Public Relations department, seven of the nine employees employed at June 1987 had left the Corporation by June 1989. As of that date, these seven vacant positions, including the Senior Manager, had been filled with contract staff, without competition. We noted that three of these positions have subsequently been advertised.
- An interview board consisting of three interviewers, including an independent representative from the personnel department, was not used for the majority of the people hired during the two-year period. The use of an interview board is a normal procedure within the Ontario government for the hiring of civil servants and was previously followed at Ontario Place.
- Job interviews were rarely documented and selection evaluation forms usually could not be located.

Although expedient, the hiring of external people without competition can negatively impact the morale of existing staff. More importantly, without proper competition, governed by fair and objective criteria, and the advice of independent qualified personnel, the Corporation is less likely to hire the best available staff.

OPERATING EXPENDITURES

Policies and Procedures Adhered To

As mentioned earlier, the Board and management made a concerted effort to control expenditures, particularly for the year ended March 31, 1989 (see Appendix I). Our review of the purchasing area for non-capital expenditures over the two-year period showed that expenditure transactions were processed generally in accordance with established policies and procedures. One exception was noted with regard to the acquisition of uniforms for the 1989 operating season.

Uniform Selections

Uniforms are provided to the over 600 seasonal employees of the Corporation and many of these uniforms must be replaced each year. Advice on uniform design and suitability is normally provided annually by a uniform committee. Requests for proposal are issued to supply the necessary uniforms each year.

We observed that a Request for Proposal (RFP) was sent to six companies on February 14, 1989, inviting them to bid on Ontario Place's uniform contract. Of the six companies, two were industrial clothiers. The remaining four were retail clothiers who compete in a similar segment of the clothing industry and sell

brand name products of comparable quality. The companies were required to reply in ten days. The RFP was subsequently cancelled because only two bids were received, both from the industrial clothiers. Management was not satisfied with either.

A second RFP was issued on March 1, 1989 to the two industrial clothiers who responded to the first RFP and to one of the four retail clothiers who did not respond earlier. Management stated that this retail clothier misunderstood the first RFP, thinking that, because the firm had previously provided relevant information to the corporation in connection with a potential sponsorship agreement to subsidize the cost of uniforms, there would be no need to respond. Consequently, this firm was invited to bid again with the only other two bidders who had previously expressed interest.

The only retail clothier invited was subsequently granted the uniforms contract, which amounted to over \$150,000 for the 1989 operating season.

Our examination of the selection process and results further revealed the following:

- The Uniform committee, an advisory group made up of staff representatives, was not used for advice in 1989 unlike past years. The evaluation of proposals and recommendation for selection was done primarily by the Senior Manager, Finance and Administration.
- The winning supplier's name was prominently displayed on the back of the uniforms thus generating a significant amount of advertising with over 600 staff at Ontario Place wearing the supplier's name on their backs.

Management indicated that the supplier agreed to give the Corporation a 40 per cent discount in return for the free advertising. Despite this discount the individual unit prices paid were significantly higher than previous years. Nine of eleven uniform items acquired were more expensive than previous years. For example, a baseball cap cost \$11.00 in 1989 as compared to \$2.00 in 1988; a woman's sweater cost \$35.00 in 1989 as compared to \$10.00 in the previous year.

Management indicated that the main objective was to improve the quality and impression created by the uniforms. Although staff in general did like the overall impression of their new uniforms, there were many complaints which led a reconstituted uniform committee to unanimously recommend on August 15, 1989, that "Ontario Place should endeavour to cancel the remainder of the (two-year) agreement."

In our opinion, the process was not fair because the successful bidder had more time than other bidders to consider design concepts and styles. Consequently, other bidders were less likely to have met managements' objectives for quality and impression.

OTHER MATTERS

A number of other transactions were examined to address concerns raised publicly by the media. The results of our examination are set out below.

Consultant Hiring

From time to time, management hires external consultants to help in areas where internal expertise is lacking. Existing Ministry guidelines stipulate that single sourcing for consulting contracts over \$15,000 requires Deputy Minister approval.

We noted a purchase order for a consultant fee of up to \$20,000 was issued in November 1987 without tender. Our examination of Board minutes showed that in October 1987, the Chairman "requested the Board's consideration and approval to retain the consultant to co-ordinate a retreat for the Board and senior staff." The request of the Chairman was approved by the Board. However, there is no evidence that the cost of the consultant was discussed. We were not able to locate the required Deputy Minister's approval of the purchase order for single sourcing. According to a memo written to the Ministry by the former general manager, the failure to tender was due to a misunderstanding as to which guidelines applied. Management Board guidelines require only contracts over \$25,000 to be tendered and this was the guideline erroneously applied.

In December 1987, the media reported that the consultant was the spouse of a Cabinet Minister. We noted that on December 15, 1987, subsequent to the media report, the Chairman cancelled the consultant contract. The consultant was paid \$4,950 for his services up to that date.

On January 28, 1988, the Board indicated that it still wished to have a one day retreat. The Board required that "quotes be requested to hire a facilitator, for the retreat on March 30, 1988."

We were satisfied that of the Board's instructions were followed and that invitations for quotation were sent to three potential facilitators. The previously terminated consultant came in with the lowest bid of \$4,050 and was awarded the contract. In fact, for a contract of this size, bids were not required but were deemed prudent in view of the consultant's relationship to a Minister.

Unwritten Sponsorship Agreement

In our review of corporate sponsorship revenues, we were able to locate 12 of 13 corporate sponsorship agreements.

However, we were not able to locate a written agreement for the contribution of \$25,000 from one corporate sponsor. Our further discussion with management and the Chairman revealed that the agreement was done verbally. We were informed that the only obligation Ontario Place assumed was the purchase of two dinner tables at a charity gala for \$4,000.

We were satisfied that the Corporation had indeed received the \$25,000 and that the \$4,000 was paid to the United Way. However, without a written agreement

documenting the rights and obligations of each party, the Corporation may be exposed to unknown obligations.

Chairman's Remuneration and Expenses

During the two years of her tenure, the Chairman received only the regular per diem payments for attending Board meetings. She did not receive extra compensation for additional time and effort she spent at Ontario Place. Her total compensation for attending Board meetings, at the per diem rate of \$140, was \$2,940 for 21 meetings.

Chairman's expenses (e.g. hospitality, public relations function, etc.) were not specifically identified in the accounting records. During the last six months of her tenure we found the following invoices addressed to the Chairman:

- Three payments to a restaurant, where she is an owner, totalling \$2,191. Of this total, \$1,674 was for a Christmas/Hanukkah party and board meeting involving Board and senior staff members.
- Payments by use of corporate charge cards issued in her name for a total of \$823 over a four-month period. Charges were usually for hospitality with provincial or municipal politicians.

Personal expenses incurred by the Chairman for family functions (such as a Bar Mitzvah party for her son and a birthday party for her daughter) held at the Trillium Restaurant were not paid by the Corporation.

Unusual Payment to Charity

In December, 1988 the Corporation paid an invoice for secretarial services provided by the National Council of Jewish Women in the amount of \$1,500.

Our discussions with both management and the Chairman revealed that these secretarial services were provided in connection with Mrs. Starr's correspondence as Chairman of Ontario Place. As the Corporation had neither office space nor secretarial services available to the Chairman, Mrs. Starr found it expedient and economical to conduct Ontario Place business from her office at the Council.

Although unusual, we felt that both the explanation and the payment was reasonable based on our investigation of the facts and circumstances.

ONTARIO PLACE CORPORATION

Schedule of Operating Income and Expenditures
for the year ended March 31

	1989 (\$000's)	1988 (\$000's)	1987 (\$000's)	1986 (\$000's)
<u>Operating Income</u>				
Fees				
- admissions	6,229	5,477	4,916	5,185
- parking	1,991	1,650	1,860	1,463
- revenue attractions	1,647	1,762	1,468	1,357
Concessions	1,163 ⁽¹⁾	1,175	1,079	1,090
Sponsorship revenue - operating	830	724	392	449
Gross profit				
- food services	261 ⁽¹⁾	1,021	929	836
- winter program	426	469	446	582
- boutiques	162	319	288	326
Marina	495	403	383	358
Interest income	353	167	155	193
Film rentals and videotaping fees	83	22	71	54
Other	447	235	87	91
	<u>14,087</u>	<u>13,425</u>	<u>12,074</u>	<u>11,984</u>
<u>Operating Expenditure</u>				
Salaries, wages and employee benefits	7,155 ⁽¹⁾	7,167	6,557	5,851
Programming and entertainment	2,948	3,350	2,720	2,530
Advertising	1,423	1,921	1,411	1,470
Site maintenance and miscellaneous services	1,528	1,720	1,794	1,393
Realty taxes	990	897	1,031	975
General and office	876	870	959	750
Utilities	707	693	621	610
Supplies	677	614	808	648
Security services	317	318	264	267
Films and photography	137	56	75	16
Directors' fees	13	12	10	11
Sponsorship expenditures	76	-	-	-
	<u>16,847</u>	<u>17,618</u>	<u>16,250</u>	<u>14,521</u>
Operating loss (prior to government contribution)	<u>2,760</u>	<u>4,193</u>	<u>4,176</u>	<u>2,537</u>

- (1) Gross Profit - Food Services for fiscal 1989 was earned during the period from May 19, 1988 to June 29, 1988. On June 30, a private firm was awarded a contract to manage all fast food operations. The Corporation earned a fixed percentage of revenues collected by the private firm, from which June 30 to September 5 (park closing) amounted to about \$242,000. This amount has been included in Concessions revenue. Wages and benefits of the Corporation's food service seasonal employees, in the amount of \$363,000, were paid by the private firm.



APPENDIX II - Summary of Food and Retail Outlet Changes

Name of Location (Type)	Operator Summer 1988	Name of Location (Type)	Operator Summer 1989
Poffertjee (Fast Food)*	OPC/Private	Starters (Fast Food)	Private
Caboose (Fast Food)	OPC/Private	Tree House (Fast Food)	Private
Wharf (Fast Food)	OPC/Private	Wharf (Fast Food)	Private
Main Street (Fast Food)	OPC/Private	Blueberry Hill (Fast Food)	Private
Dockside (Fast Food)	OPC/Private	- Demolished -	-
Frozen Cola (Fast Food)	OPC/Private	- Demolished -	-
Tea House	OPC/Private	- Demolished -	-
Cook House (Fast Food)	OPC/Private	- Demolished -	-
Piggies (Fast Food)	OPC/Private	Specialty Store (Retail)	Private
Point East (Fast Food)	Private	Specialty Store (Retail)	Private
Laura Secord (Fast Food)	Private	- Demolished -	-
Kelly's Burger (Fast Food)	Private	- Demolished -	-
Galley (Fast Food)	Private	- Demolished -	-
Big "B" Ranch (Restaurant)	Private	Food Fair (with five fast-food outlets)	Private
Kelly's (Restaurant)	Private	Jam'z (Restaurant)	Private
Stoodleigh (Restaurant)	Private	Breakers (Restaurant)	Private
Zum Rhein (Restaurant)	Private	Zum Rhein (Restaurant)	Private
Point North (Restaurant)**	Private	Point North (Restaurant)**	Private
A.J. (Restaurant)**	Private	A.J. (Restaurant)**	Private
Trillium (Restaurant)	OPC/Mgmt.	Trillium (Restaurant)	OPC/Mgmt.
Centre Plaza (Retail)	OPC	Centre Plaza (Retail)	Private
Children's Village (Retail)	OPC	Children's Village (Retail)	Private
East Marina (Retail)	OPC	East Marina (Retail)	Private
Ontario North (Retail)	OPC	Ontario North (Retail)	Private
West Island (Retail)	OPC	West Island (Retail)	Private
Dockside (Retail)	OPC	- Demolished -	-

* Outlet newly constructed in May 1988

** Concessions not up for renewal until October 1997.

Name	Address
Mr. J. H. Smith	123 Main St., New York, N.Y.
Mrs. A. B. Jones	456 Elm St., Boston, Mass.
Mr. C. D. Brown	789 Oak St., Chicago, Ill.
Mr. E. F. Green	101 Pine St., Philadelphia, Pa.
Mr. G. H. White	234 Cedar St., St. Louis, Mo.
Mr. I. J. Black	567 Birch St., Portland, Me.
Mr. K. L. Gray	890 Spruce St., Denver, Colo.
Mr. M. N. Hall	123 Ash St., San Francisco, Cal.
Mr. O. P. King	456 Willow St., Seattle, Wash.
Mr. Q. R. Lee	789 Poplar St., Minneapolis, Minn.
Mr. S. T. Scott	101 Hickory St., Kansas City, Mo.
Mr. U. V. Walker	234 Walnut St., Cincinnati, Ohio.
Mr. W. X. Young	567 Chestnut St., Pittsburgh, Pa.
Mr. Y. Z. Allen	890 Sycamore St., Milwaukee, Wis.
Mr. A. B. Carter	123 Magnolia St., New Orleans, La.
Mr. C. D. Evans	456 Dogwood St., Savannah, Ga.
Mr. E. F. Harris	789 Peach St., Atlanta, Ga.
Mr. G. H. King	101 Apple St., Hartford, Conn.
Mr. I. J. Lee	234 Cherry St., Providence, R.I.
Mr. K. L. Scott	567 Plum St., Worcester, Mass.
Mr. M. N. Walker	890 Pear St., Springfield, Mass.
Mr. O. P. Young	123 Orange St., Lowell, Mass.
Mr. Q. R. Allen	456 Lemon St., Haverhill, Mass.
Mr. S. T. Carter	789 Lime St., Andover, Mass.
Mr. U. V. Evans	101 Grape St., Amesbury, Mass.
Mr. W. X. Harris	234 Fig St., Methuen, Mass.
Mr. Y. Z. King	567 Olive St., Salem, Mass.
Mr. A. B. Lee	890 Coffee St., Lynn, Mass.
Mr. C. D. Scott	123 Tea St., Boston, Mass.
Mr. E. F. Walker	456 Spice St., Cambridge, Mass.
Mr. G. H. Young	789 Herb St., Somerville, Mass.
Mr. I. J. Allen	101 Fruit St., Chelsea, Mass.
Mr. K. L. Carter	234 Veg. St., Everett, Mass.
Mr. M. N. Evans	567 Grain St., Lynn, Mass.
Mr. O. P. Harris	890 Seed St., Salem, Mass.
Mr. Q. R. King	123 Root St., Andover, Mass.
Mr. S. T. Lee	456 Stem St., Amesbury, Mass.
Mr. U. V. Scott	789 Leaf St., Methuen, Mass.
Mr. W. X. Walker	101 Flower St., Chelsea, Mass.
Mr. Y. Z. Young	234 Fruit St., Boston, Mass.

12. De concert avec le ministère des Services gouvernementaux, diriger et favoriser l'aménagement de terrains appartenant au gouvernement lorsque ceux-ci sont propices à la création de logements aux termes de la politique « Priorité au logement ». Coordonner l'aménagement de sites précis et les stratégies de commercialisation, notamment en ce qui concerne l'aspect financier de la mise en valeur, de la commercialisation et de la mise en application des programmes.
13. Entretenir des rapports avec les entreprises de promotion de la construction, les municipalités, le gouvernement fédéral et les fournisseurs de logements sociaux, mener des négociations avec eux et les aider à participer à la création de logements à prix abordable sur les terrains appartenant au gouvernement et ailleurs. Assurer la liaison entre les groupes qui participent à l'élaboration d'ententes ou de contrats allant dans le sens des objectifs fixés en matière de logement à prix abordable.
14. Unifier les inventaires des terrains appartenant à la province, aux municipalités et au gouvernement fédéral pour éviter que les fournisseurs de logement (c'est-à-dire les sociétés de logement sans but lucratif) ne se fassent concurrence pour obtenir les mêmes terrains.
15. Constituer un comité conjoint composé de représentants de la province et des régions, afin de faciliter la prise d'initiatives dans le cadre de la politique « Priorité au logement » sur les terrains appartenant aux régions, et ce afin de créer 30 000 logements au cours des cinq années à venir.

RÉSUMÉ DES RESPONSABILITÉS DU CONSEILLER SPÉCIAL, LOGEMENT À PRIX ABORDABLE

1. Diriger le Groupe d'étude sur le logement à prix abordable, c'est-à-dire : établir l'organisation complète du groupe d'étude; embaucher et former le personnel; mettre au point des plans et des horaires de travail pour les activités du groupe d'étude; encadrer et surveiller le personnel dans l'exécution des plans de travail; veiller au respect des politiques en matière de finances, de ressources humaines et d'administration; surveiller et évaluer les résultats atteints dans le cadre de différentes initiatives dans le domaine du logement à prix abordable et en faire rapport.
2. Négocier avec les autres ministères, les municipalités et le gouvernement fédéral afin d'obtenir que des terrains soient libérés aux fins de la politique « Priorité au logement ». Dans la mesure du possible, identifier des stratégies d'aliénation ou de mise en valeur de bien-fonds susceptibles d'être modifiées de façon à servir les objectifs de la politique « Priorité au logement », ces activités devant être entreprises de concert avec le ministère des Services gouvernementaux.
3. Faciliter l'élaboration de propositions et de plans pour des parcelles de terrain précises afin de veiller au respect de la directive des 25 pour 100 en ce qui a trait aux terrains n'appartenant pas à la province. Cette activité est à entreprendre conjointement avec le groupe immobilier du gouvernement (Government Land Group) et le groupe « Collaboration et association ».
4. Ouvrir, en conjonction avec le ministère des Services gouvernementaux, à une évaluation des mesures envisageables pour optimiser l'utilisation des terrains appartenant à la province ou d'autres terrains, par une mise en valeur initiale ou renouvelée, en mettant en place des formules de logement mixtes.
5. Coordonner un effort conjoint avec les ministères du Logement, des Services gouvernementaux et des Affaires municipales, pour la constitution d'associations avec les municipalités ou le gouvernement fédéral en ce qui a trait aux initiatives de « Priorité au logement » mises en oeuvre sur les terrains appartenant à un gouvernement.
6. Entretenir des rapports avec le conseiller spécial du Premier ministre sur l'aménagement riverain à Toronto et le président du comité de la région du grand Toronto, afin d'assurer la continuité et la mise en commun des efforts déployés par tous les groupes concernés.
7. Assurer la liaison avec le secteur privé et les groupements d'intérêts communautaires afin de les encourager à participer aux initiatives de « Priorité au logement » et à entreprendre des projets connexes.
8. Recommander des mesures susceptibles d'améliorer et de faciliter la prise de mesures de « Priorité au logement » sur des terrains de tous genres.
9. Identifier les obstacles à la désignation de terrains dans la région métropolitaine de Toronto à des fins résidentielles (en particulier pour les projets subventionnés), et proposer des façons de les surmonter.
10. Coordonner, avec le conseiller spécial sur l'aide municipale au logement, le traitement et l'approbation rapide par les ministères du Logement et des Affaires municipales des modifications apportées à l'utilisation des sols en faveur de la politique de « Priorité au logement ».
11. Coordonner et superviser les activités du Groupe de travail pour le logement abordable visant à collaborer à l'élimination des obstacles existants, participer aux interventions et multiplier les possibilités d'augmenter le nombre de logements à prix abordable. Collaborer avec le Groupe des politiques de logement afin d'encourager la modification des politiques et des directives de planification, et enfin élaborer des projets de réforme législative.

CHRONOLOGIE DES ÉVÉNEMENTS

6 avril 1988	Le Conseil des ministres sanctionne une nouvelle politique de « Priorité au logement ».
18 mai 1988	Dino Chiesa a une entrevue avec Gardner Church, Tom Zizys et Robert Riggs.
20 juin 1988	Gardner Church consulte le secrétaire associé au Conseil des ministres chargé des ressources en personnel cadre, ainsi que le Secréariat des ressources humaines au sujet de la procédure à suivre pour embaucher Dino Chiesa.
11 juillet 1988	Le sous-ministre du Secréariat des ressources humaines répond à la lettre que Gardner Church lui a adressée le 20 juin.
3 août 1988	Gardner Church écrit à M. Sloan, à M ^{me} Todres et à M ^{me} Jacobsen au sujet du recrutement d'une conseillère ou d'un conseiller spécial pour le logement à prix abordable et de la procédure de sélection applicable.
du 4 au 11 août 1988	Les quatre autres candidats au poste sont convoqués à une entrevue. Dino Chiesa n'a pas été convoqué une deuxième fois.
24 août 1988	Le ministère du Logement fait une proposition au Conseil de gestion demandant l'autorisation d'engager d'un expert-conseil externe au gouvernement. Les signataires de la proposition sont Gardner Church et Chaviva Hosek.
13 septembre 1988	Le Conseil de gestion approuve le recrutement d'un expert-conseil pour le logement à prix abordable, et cela pour une période de deux ans, avec une option de prolongation de 12 mois. Le coût total sur trois ans ne doit pas dépasser 350 000 \$.
31 janvier 1989	Le ministère et Don Chiesa signent un contrat assorti d'une rémunération annuelle de 116 700 \$ plus frais de déplacement et autres débours raisonnables soumis à l'approbation du sous-ministre. Ce contrat devait entrer en vigueur le 1 ^{er} avril 1989.
31 mars 1989	La date d'entrée en vigueur du contrat est reportée au 1 ^{er} mai 1989.
1 ^{er} mai 1989	Dino Chiesa entre en fonctions au ministère.

LISTE DES PERSONNES INTERROGÉES

Gordon Ashworth	Ancien directeur général, Bureau du premier ministre
Dino Chiesa	Conseiller spécial, aménagement foncier ministère du Logement
Gardner Church	Ancien sous-ministre du Logement
Bryan Davies	Ancien sous-ministre du Logement
Chaviva Hosek	Ancienne ministre du Logement
Pat Jacobson	Ancienne secrétaire associée au Conseil des ministres, ressources en personnel cadre
Robert Riggs	Sous-ministre adjoint, ministère des Services gouvernementaux
John Sloan	Secrétaire du Conseil de gestion
Patricia Starr	Ancienne présidente, Société d'exploitation de la Place Ontario
Tom Zizys	Président, Groupe d'étude sur le logement abordable (détaché par le Bureau du premier ministre)

ces occasions de lui vanter les mérites de M. Chiesa », mais il dit ne pas s'en souvenir. Il a toutefois indiqué qu'il était au courant de l'estime que M^{me} Starr avait pour M. Chiesa. M^{me} Starr a reconnu qu'il était possible qu'elle ait parlé de M. Chiesa à ces personnes. Néanmoins, elle nous a assuré qu'elle n'avait aucunement eu l'intention de les influencer ou de se mêler de quelque manière que ce soit à la procédure de recrutement. Elle dit que son seul souci avait été de voir le ministère embaucher la personne la mieux qualifiée pour l'emploi.

Les quatre personnes contactées ont affirmé que leurs actions n'avaient d'aucune façon été influencées par leurs communications avec M^{me} Starr. Notre vérification confirme cette affirmation.

Nous avons par ailleurs appris que M. Gordon Ashworth, qui était à l'époque directeur général au Bureau du premier ministre, avait contacté M^{me} Jacobsen pour suggérer que le ministère du Logement aurait peut-être intérêt à se mettre en rapport avec M. Chiesa. Nous avons interrogé M. Ashworth là-dessus, mais il ne pouvait pas exactement se souvenir qui lui avait recommandé M. Chiesa. M. Ashworth a témoigné que des personnes lui étaient fréquemment recommandées.

M^{me} Jacobsen a rencontré M. Chiesa avant de fournir ses coordonnées à M. Church. Ceci se situait avant le 18 mai 1988, date à laquelle M. Chiesa a eu une entrevue au sujet du poste à combler au ministère du Logement. M. Church dit à M^{me} Jacobsen qu'il songeait depuis quelque temps déjà à offrir un poste à M. Chiesa au ministère du Logement.

Nous sommes d'avis que l'embauche de M. Chiesa se serait faite pareillement sans l'intervention de M^{me} Starr ou de M. Ashworth.

Les médias ont également rapporté que M. Chiesa avait travaillé en 1987 pour la campagne de M^{me} Hosek. Notre vérification n'a trouvé aucune preuve selon laquelle M^{me} Hosek aurait exercé son influence de quelque manière que ce soit pour contribuer à l'embauche de M. Chiesa.

Toronto (Ontario)
le 29 septembre 1989

(signé: K.W. Leishman)
pour N. J. Mishchenko, C.M.A.
Directeur
Direction des attributions spéciales

D'après le ministère, un seul candidat satisfaisait à ces deux aspects. Nous n'avons toutefois pas trouvé de preuve probante allant dans ce sens.

Le report de la nomination

À l'origine, le ministère voulait que le conseiller spécial chargé du logement à prix abordable soit en poste le 1^{er} octobre 1988. Toutefois, en octobre 1988 le ministère procéda à la nomination d'un nouveau sous-ministre (Bryan Davies). Celui-ci nous a informés qu'étant nouveau au ministère, il avait voulu s'assurer de la nécessité de créer ce poste de conseiller spécial et vérifier qu'aucune personne déjà employée par le ministère ne pouvait remplir ces fonctions. Il voulait également vérifier les attributions précises de ce conseiller.

M. Davies dit avoir rencontré M. Chiesa le 13 septembre 1988, après que le Conseil de gestion ait approuvé le recrutement d'un expert-conseil. Début octobre 1988, M. Davies avait téléphoné à Dino Chiesa pour l'informer que le poste ne serait pas comblé dans l'immédiat.

Plus tard, le ministère décida en faveur de ce contrat d'expert-conseil. Le 13 décembre 1988, M. Davies convoqua M. Dino Chiesa pour discuter des modalités du contrat. La signature de ce document eu lieu le 31 janvier 1989.

M. Chiesa entra en fonctions le 1^{er} mai 1989, environ trois mois plus tard. Ce délai devait permettre à M. Chiesa d'achever les travaux qu'il avait entamés chez son employeur précédent et de se dessaisir de tous investissements et autres engagements susceptibles de donner lieu à un conflit d'intérêts dans l'exercice de ses fonctions au ministère du Logement.

Récapitulation

L'examen de cette affaire nous amène inévitablement à conclure que le ministère était bien décidé à engager les services de M. Chiesa pour ce poste, et cela dès le départ aussi bien que pendant toute la durée de la procédure de recrutement. Nous n'avons aucune preuve concrète à l'appui de notre conclusion et le ministère soutient avec force la position contraire. Néanmoins, nous trouvons qu'il serait très difficile pour un observateur impartial d'arriver à une conclusion différente de la nôtre.

Nous sommes par ailleurs d'avis que le ministère a opté en faveur de M. Chiesa parce qu'il était fermement convaincu que parmi les personnes disponibles, M. Chiesa était le meilleur, sinon le seul, à présenter à la fois les qualifications requises pour le poste et à être disposé à accepter les conditions du ministère.

Pour faciliter la récapitulation, une chronologie des événements ayant abouti à l'embauche de Dino Chiesa par le ministère du Logement est jointe en annexe B du présent rapport.

AUTRES QUESTIONS

Avant que nous ne procédions à cette vérification, les médias avaient fait mention d'une relation d'affaires entre M^{me} Patricia Starr, l'ancienne présidente de la Société d'exploitation de la Place Ontario et M. Chiesa. Au cours de notre vérification, nous avons appris que M^{me} Starr avait contacté plusieurs personnes au sujet de M. Chiesa, à savoir M^{me} Chaviva Hosek, Bryan Davies et Tom Zizys. En outre, Gardner Church a rencontré M^{me} Starr les 5 mai et 9 août 1988. M. Church admet qu'il est « concevable que M^{me} Starr ait essayé à

les qualifications requises et à organiser un concours auquel ne participent que ces seuls candidats. Telle est la procédure que le ministère a suivie en l'espèce. La présélection a retenu cinq candidats, dont M. Chiesa.

Propositions écrites

Conformément aux procédures prescrites par le Conseil de gestion, il est nécessaire, quel que soit le concours, de demander à chaque candidat une proposition écrite, et de procéder à une évaluation de ces propositions. Le ministère a procédé autrement. Nous rappelons toutefois qu'il a indiqué qu'il aurait été prêt à suivre la procédure prescrite si plus d'un candidat avait satisfait à toutes les exigences au niveau de l'entrevue.

En égard à la procédure assez spéciale suivie pour le recrutement du conseiller spécial chargé du logement à prix abordable, en particulier pour ce qui a trait aux propositions écrites, il était certainement nécessaire d'obtenir l'approbation du Conseil de gestion. Une approbation directe et officielle n'a pas été obtenue. Toutefois, le ministère avait révélé ses intentions dans diverses correspondances et discussions avec des hauts fonctionnaires du Bureau du Conseil des ministres, du Secrétariat des ressources humaines et du Secrétariat du Conseil de gestion. De plus, la procédure suivie a été décrite en détail dans la proposition présentée le 24 août 1988 au Conseil de gestion et sur laquelle ce dernier a basé son approbation en date du 13 septembre. Compte tenu de ces faits, il serait malaisé de concevoir que le Conseil de gestion n'ait pas en fait, tacitement ou officiellement, approuvé l'action du ministère.

Entrevues

Nous sommes d'avis que la façon dont les entrevues ont été menées était bien moins que parfaite, et cela à plusieurs égards. Voici quelques exemples :

- Un seul candidat, M. Chiesa, a eu une entrevue avec ce que l'on pourrait appeler un jury complet, composé de plusieurs hauts responsables des ministères du Logement et des Services gouvernementaux et du Groupe d'étude sur le logement à prix abordable.

Trois candidats ont eu une entrevue avec seulement deux responsables, à savoir M. Church et M. Zizys. Le cinquième candidat n'a rencontré que M. Church.

- En examinant les évaluations des quatre candidats autres que M. Chiesa, nous avons constaté qu'elles avaient toutes été préparées par M. Church. Interrogé à ce sujet, M. Zizys dit avoir passé en revue les évaluations relatives aux candidats qu'il avait rencontrés et n'avoir rien trouvé à y redire.

- Dans sa proposition du 24 août 1988 au Conseil de gestion, le ministère a indiqué que l'ensemble des candidats avaient été évalués par des représentants du ministère du Logement, du ministère des Services gouvernementaux et du Bureau du premier ministre. À la lumière des faits réels, cette déclaration est nettement exagérée.

- Nous avons aussi des réserves quant à la nature et à la teneur des entrevues. Nous avons parlé à l'un des quatre autres candidats à ce sujet. Il a confirmé qu'il avait eu des discussions générales avec M. Church et une réunion avec M. Church et M. Zizys pendant lesquelles il avait été question des besoins du ministère. Toutefois il n'avait pas eu le sentiment qu'il s'agissait d'une entrevue d'embauche en tant que telle, et la conversation n'avait porté sur aucun fait concret.

La procédure adoptée pour les entrevues n'a pas traité tous les candidats de la même façon. Un traitement inégal serait nécessairement une injustice si plus d'une personne pouvait faire état des qualifications requises et de la volonté d'accepter les conditions du ministère.

création de logements à prix abordable. La demande portait sur un contrat de trois ans et un coût maximal de 350 000 \$ pour la durée du contrat.

Dans sa proposition au Conseil de gestion, le ministre dit avoir cherché et trouvé une personne (un expert-conseil) travaillant dans le domaine de l'habitation résidentielle et ajoute avoir consulté le ministre des Services gouvernementaux pour savoir si le candidat retenu était acceptable.

Le ministre a exposé au Conseil de gestion les grandes lignes de la procédure de recherche et d'entrevues justifiant sa sélection. Cet exposé fait mention de la présélection de cinq candidats. Toutefois, aucun de ces candidats, pas même celui finalement retenu, n'ont été désignés par leur nom dans la proposition.

Le 13 septembre 1988, le Conseil de gestion a approuvé le recrutement d'un expert-conseil aux fins exposées par le ministre. L'approbation portait précisément sur un contrat de deux ans, avec la possibilité d'un an de prolongation, pour un coût maximal de 350 000 \$.

Le respect des directives administratives

Les directives du Conseil de gestion posent certaines conditions au recours par les ministères à des services d'experts-conseils :

- définition de la tâche, justification du recours à l'extérieur et approbation du contrat par un cadre supérieur;
- énoncé des attributions;
- confirmation de la nécessité d'avoir recours à un fournisseur externe;
- respect des procédures d'acquisition de services par voie de concours.

Nous sommes d'avis que les trois premières conditions étaient respectées (voir l'annexe C pour les attributions). Toutefois, la quatrième condition n'a pas été respectée à tous les égards.

Concours ouverts

Les procédures d'acquisition concurrentielles servent à garantir le meilleur rapport qualité-prix et elles contribuent à l'équité d'emploi.

Un concours ouvert, auquel peut se présenter toute personne compétente intéressée par le poste offert, est en général reconnu comme étant la procédure la plus juste et donc préférable à toute autre. En ce qui concerne le poste en question, M. Church a fait valoir que peu de personnes avaient l'expérience requise et étaient de surcroît disposées à accepter les conditions particulières posées par le ministre. En conséquence, il est d'avis qu'un concours ouvert n'aurait servi aucune fin pratique.

Les concours ouverts prennent en général beaucoup de temps. Il a pu sembler urgent de combler le poste en question, ce qui aurait en partie pu justifier la décision de ne pas suivre cette voie. Toutefois, à posteriori, comme le poste n'a en fait pas été comblé avant le 1^{er} mai 1989, on voit difficilement en quoi un concours ouvert aurait pu présenter un inconvénient.

Une autre procédure mettant en jeu la concurrence et qui est acceptable aux termes des directives du Conseil de gestion consiste à repérer un certain nombre de candidats possédant

conflit d'intérêts. La lettre donne une description détaillée des critères de sélection et des conditions posées pour l'octroi du poste, notamment en matière de conflit d'intérêts.

M. Church indique dans sa lettre du 3 août qu'il avait pris conseil auprès de plusieurs entreprises parmi les plus performantes dans l'industrie de la promotion immobilière, espérant qu'elles puissent le mettre sur la voie de candidats possibles pour le poste. Grâce à cette initiative et à sa connaissance de cette industrie, M. Church a pu dresser une liste de cinq candidats présélectionnés, l'un d'entre eux étant M. Chiesa. M. Church avait alors annoncé que chacun des quatre autres candidats serait convoqué à une entrevue. (Un entretien avec M. Chiesa avait déjà eu lieu en mai).

Les entrevues

M. Church a eu des entretiens préliminaires avec les quatre autres candidats et des entrevues officielles ont été organisées avec chaque personne entre le 4 et le 11 août 1988. Trois des quatre candidats ont eu une entrevue avec M. Church et M. Zizys. L'autre candidat a eu un entretien avec M. Church.

L'évaluation des candidats s'est faite en fonction des critères établis pour le poste par M. Church. Ces critères exigeaient de l'expérience en matière d'aménagement foncier et de création de logements; des connaissances et des aptitudes confirmées pour traiter des affaires avec le gouvernement; des compétences pour mener des négociations, en particulier en ce qui concerne des projets de mise en valeur complexes; la connaissance de l'industrie en question et une excellente réputation au sein de celle-ci; enfin, de l'expérience en gestion de projets. Les candidats devaient également être prêts à accepter les conditions de rémunération du contrat, à savoir quelque 116 000 dollars par an.

En plus de ces critères, le candidat retenue devrait accepter les conditions suivantes :

« cesser, pendant toute la durée du contrat, toute activité comme promoteur de construction en Ontario et toute relation avec un promoteur ayant des activités en Ontario »;

« divulguer tout intérêt direct ou indirect dans le marché immobilier de l'Ontario et dans des entreprises ayant un intérêt dans le marché immobilier ou dans des projets de construction d'habitations, et faire état de tout contact avec pareille entreprise. »

M. Church nous a fait savoir que trois des quatre candidats satisfaisaient de façon acceptable aux critères établis. Toutefois, l'acceptation des conditions d'octroi du contrat représentait de toute évidence un obstacle majeur. M. Church nous a assuré que si plus d'un candidat avait satisfait aux critères et accepté l'ensemble des conditions, des propositions auraient été sollicitées et un comité mis sur pied pour les évaluer. Cela n'était pas toutefois pas nécessaire, puisque d'après M. Church, M. Chiesa est le seul candidat qui ait satisfait aux critères et qui ait pu être embauché aux conditions voulues par le ministère.

L'approbation du Conseil de gestion

Les contrats pour services d'expert-conseil susceptibles de dépasser 250 000 \$ sont soumis à l'approbation du Conseil de gestion. Par conséquent, le 24 août 1988, le ministère a demandé au Conseil de gestion l'autorisation de retenir les services d'un expert-conseil externe chargé de diriger la mise en oeuvre des activités prévues dans le domaine de la

Lors de sa réunion du 29 juin 1989, le Comité permanent des comptes publics a adopté une motion donnant instruction au vérificateur provincial de procéder :

« immédiatement à la vérification de la procédure ayant abouti à l'attribution, par le ministère du Logement, d'un contrat d'expert-conseil à Dîmo Chiesà; cette vérification devra nécessairement, mais pas exclusivement, porter sur l'acquisition de services par voie de concours, l'équité d'accès pour tous les fournisseurs de services d'expert-conseil et le traitement de ceux-ci, et enfin sur les documents permettant d'établir le bien-fondé de l'attribution du contrat, entre autres les approbations du conseil de gestion. »

À cette fin, nous avons examiné tous les documents pertinents du ministère du Logement et mené des entretiens avec un certain nombre de personnes ayant participé d'une manière ou d'une autre à la procédure de recrutement (voir annexe A).

Ces entretiens visaient à recueillir un maximum de renseignements afin de satisfaire à la requête du comité. De ce fait, certains commentaires et conclusions sont basés en totalité ou en partie sur des entretiens avec des personnes clés.

CONCLUSIONS

La procédure de recrutement était conforme aux directives du conseil de gestion en matière de recrutement de services d'expert-conseil.

Bien que le recrutement par concours ouvert soit préconisé, aucun concours n'a eu lieu pour l'attribution du poste en question. Bien que la décision de ne pas organiser de concours soit contestable, il n'en demeure pas moins que la procédure de recrutement retenu était conforme aux directives. Nous avons constaté certains écarts par rapport aux normes prescrites, toutefois ceux-ci ont reçu au moins l'accord tacite du conseil de gestion.

Nous avons émis des réserves quant à la mise en pratique de la procédure utilisée. À notre avis, elle laissait fortement à désirer sur un point important, à savoir celui de faire état d'un traitement juste et équitable de tous les candidats retenus.

Le ministère était bien décidé à faire appel aux services de M. Chiesà dès les premiers de 1988. D'après le ministère, M. Chiesà mieux que toute autre personne pouvait faire état des qualifications exigées et de la volonté de respecter les conditions d'emploi du ministère. À l'origine, le ministère avait proposé d'embaucher M. Chiesà comme employé permanent.

Début août 1988, après avoir pris conseil auprès du Secrétariat des ressources humaines et de plusieurs hauts fonctionnaires, le ministère opta en faveur d'un contrat d'expert-conseil plutôt que d'un contrat d'emploi permanent pour ce qui est des services en question. Toutefois, il n'y a guère d'indices concrets que le ministère serait revenu sur sa conviction que M. Chiesà était la personne idéale pour ce poste. D'après nous, il est fort peu probable que la procédure, qui a abouti après plusieurs mois à l'attribution d'un contrat d'expert-conseil à M. Chiesà, ait pu faire revenir le ministère sur son intention initiale.

Au président et aux membres
du Comité permanent des comptes publics

Conformément à une motion adoptée par le comité lors de sa réunion du 29 juin 1989, nous faisons par la présente rapport de notre vérification du contrat de M. Dino Chiesa.

D. F. Archer,
Vérificateur provincial

Toronto, Ontario
le 6 octobre 1989

MINISTÈRE DU LOGEMENT
VÉRIFICATION DU CONTRAT DE M. DINO CHIESA

**Rapport du vérificateur provincial sur
la vérification du contrat de M. Dino Chiesa**

ANNEXE D

1. Connaissances et aptitudes confirmées pour ce qui a trait au gouvernement

2. Aménagement foncier/négociations complexes

3. Crédibilité/familliarité avec l'industrie

4. Gestion : A) dans le secteur public B) dans le secteur privé

5. Renonciation à toute activité immobilière

6. Divuligation

7. Exclusivité

o Connaissances et aptitudes confirmées pour ce qui a trait à la prise de décisions aux quatre niveaux de gouvernement (fédéral, provincial, régional et local) relativement à l'utilisation des sols, au logement, à l'aménagement et aux politiques économiques et sociales.

o Aptitudes confirmées pour ce qui a trait à l'aménagement foncier à des fins complexes touchant de nombreux groupements d'intérêts.

o Compétences exceptionnelles constatées pour ce qui a trait à des négociations sur des ententes d'aménagement faisant entrer en ligne de compte l'acquisition et la vente de terrains, des associations entre le secteur public et le secteur privé, la réalisation d'objectifs sociaux et différents aspects contradictoires de l'intérêt public, dans le cadre du secteur privé.

o Connaissances approfondies de l'industrie de la promotion de la construction dans la région de Toronto et dans le reste de la province, et excellente réputation au sein de celle-ci.

o Aptitudes confirmées pour la gestion, de préférence aussi bien dans le secteur privé que dans le secteur public.

o Volonté de cesser, pendant toute la durée du contrat, toute activité comme promoteur de construction en Ontario et toute relation avec un promoteur ayant des activités en Ontario.

o Volonté de divulguer tout intérêt direct ou indirect dans le marché immobilier de l'Ontario et dans des entreprises ayant un intérêt dans le marché immobilier ou dans la promotion immobilière, et faire état de tout contact avec pareille entreprise.

o Volonté de n'entreprendre du travail pour un tiers qu'avec l'autorisation du ministère.

Critères de sélection des candidats
Ministère du Logement

ANNEXE C

Ordre du jour des audiences

ANNEXE B

COMITÉ PERMANENT DES COMPTES PUBLICS

Attributions

Règlement 104 j) :

Le Comité permanent des comptes publics, qui est autorisé à étudier le rapport du vérificateur provincial et les comptes publics et à faire rapport de ses observations, opinions et recommandations à l'Assemblée législative. Ces documents sont renvoyés en permanence à ce comité dès qu'ils sont déposés.

ANNEXE A
Attributions du
Comité permanent des comptes publics

LISTE DE RECOMMANDATIONS

1. Que les contrats de travail à l'intérieur de la fonction publique de l'Ontario garantissent l'égalité d'accès et de traitement à tous les candidats, en toutes circonstances. Que les entrevues avec les employés éventuels soient impartiales et leur déroulement normalisé. Que la révision des pratiques d'emploi provinciales soit envisagée, afin de veiller à ce d'offrir ces garanties aux futurs employés. Que pareille révision porte aussi sur les procédures suivies pour engager les services d'employés à contrat et d'employés à temps partiel.
2. Que le ministère du Logement passe en revue les directives et les procédures de recrutement établies et, qu'il comble, au besoin, les lacunes qui pourraient contrevenir à l'égalité d'accès et de traitement de tous les employés éventuels. Que le ministère songe à examiner l'impression de conflit pouvant naître de certains recrutements; la procédure de recrutement doit être absolument ouverte, voire engendrer de vastes campagnes de publicité, ainsi que la prise en considération de candidats aux points de vue novateurs du fait de la diversité de leur expérience professionnelle.
3. Que le ministère du Logement passe en revue ses procédures de recrutement du point de vue de la tenue de dossiers afin de veiller à ce que toutes les discussions et les conversations pertinentes à une décision d'embauche soient consignées. Les dossiers, où doivent figurer tous les détails relatifs à la publication d'annonces, aux entrevues avec les candidats et aux procédures de sélection, doivent être disponibles en cas de litige ou de vérification.

Selon le comité, les directives actuelles du Conseil de gestion suffisent à maintenir les principes d'équité et de justice; il estime toutefois que la précaution supplémentaire de consigner les différences étapes de la procédure par écrit garantirait le respect fidèle des principes du Conseil de gestion.

Le comité fait par conséquent la recommandation suivante :

3. **Que le ministère du Logement passe en revue ses procédures de recrutement du point de vue de la tenue de dossiers afin de veiller à ce que toutes les discussions et les conversations pertinentes à une décision d'embauche soient consignées. Les dossiers, où doivent figurer tous les détails relatifs à la publication d'annonces, aux entrevues avec les candidats et aux procédures de sélection, doivent être disponibles en cas de litige ou de vérification.**

Le comité a obtenu l'assurance que le ministère constituerait désormais des dossiers complets sur toutes ses décisions de recrutement.

Le délai d'embauche

Le report de la nomination du conseiller spécial pour le logement à prix abordable au-delà de la date prévue du 1^{er} octobre était en partie attribuable à l'arrivée de M. Davies au poste de sous-ministre du Logement. Le nouveau sous-ministre voulait revoir la nécessité d'engager un expert-conseil, ainsi que les attributions qui lui seraient confiées. M. Chiesa avait été avisé le 13 septembre 1988 que son entrée en fonctions ne pourrait avoir lieu avant un certain temps, et cela bien qu'elle ait obtenu l'approbation du Conseil de gestion. Le contrat entre le ministère du Logement et M. Chiesa a été signé le 31 janvier 1989 et ce dernier a entamé ses fonctions le 1^{er} mai 1989.

Le comité a approfondi avec M. Davies le sujet du report de la nomination de M. Chiesa. L'ancien sous-ministre a indiqué qu'il avait voulu se familiariser avec ses nouvelles responsabilités avant de prendre une décision.

des doutes persistent quant à la nature et à la portée des entrevues, vu leur caractère informel et l'absence de renvois aux détails du contrat.

Le vérificateur a conclu que les candidats n'avaient pas tous bénéficié d'un traitement équitable. Le traitement des candidats pourrait être qualifié d'injuste si plus d'une personne avait été qualifiée et prête à accepter le poste. Le vérificateur a trouvé que la preuve n'était pas probante, bien que le ministère lui ait assuré qu'un seul candidat satisfaisait à toutes les exigences et conditions. À la déclaration du vérificateur selon laquelle « un traitement inégal serait nécessairement une injustice si plus d'une personne pouvait faire état des qualifications requises et de la volonté d'accepter les conditions du ministère », M. Thompson a répliqué que les candidats avaient été traités de façon équitable et juste.

Le ministère a donné raison au vérificateur lorsque celui-ci a critiqué le fait que les candidats n'avaient pas tous été évalués par le jury au complet, contrairement à la proposition faite par le ministère au Conseil de gestion en août 1988. Il aurait été préférable de dire que le candidat qualifié et disposé à accepter les conditions du ministère avait bénéficié d'une entrevue et d'une évaluation par le jury au complet. Les dossiers du ministère font apparaître qu'une seule personne parmi les quatre candidats qualifiés avait été prête à accepter les conditions du ministère. M. Thompson a indiqué que le ministère reconnaissait s'être rendu fautif en n'ayant pas utilisé des termes plus clairs. L'actuel sous-ministre a soutenu que les procédures de recrutement avaient été adéquates, mais en ce qui concerne la vérification, M. Thompson a ajouté :

... si les démarches ne sont pas consignées de telle manière que le vérificateur provincial ou quiconque d'autre puisse en prendre connaissance et s'assurer que tout est en règle, alors quelque chose ne va pas.

2. Que le ministère du Logement passe en revue les directives et les procédures de recrutement établies et, qu'il comble, au besoin, les lacunes qui pourraient contrecarrer l'égalité d'accès et de traitement de tous les employés éventuels. Que le ministère songe à examiner l'impression de conflit pouvant naître de certains recrutements; la procédure de recrutement doit être absolument ouverte, voire engendrer de vastes campagnes de publicité, ainsi que la prise en considération de candidats aux points de vue novateurs du fait de la diversité de leur expérience professionnelle.

Le comité se réserve le droit de convoquer à nouveau le ministère du Logement une fois que celui-ci aura eu l'occasion de réfléchir aux problèmes soulevés et de mettre en oeuvre les modifications nécessaires.

Les problèmes inhérents aux entrevues

Le comité a émis des réserves quant à l'absence de description de fonctions et d'évaluation formelle, contrairement à la pratique habituelle. L'explication fournie par le ministère est que l'évaluation ne nécessitait pas de propositions écrites.

D'après le ministère, il n'y avait qu'un seul candidat qualifié. Le vérificateur a trouvé cette situation assez surprenante. L'accord du Conseil de gestion était requis, mais aucune approbation directe et officielle n'a été obtenue. Les intentions du ministère ont été consignées dans la correspondance et annoncées lors de discussions avec le Bureau du Conseil des ministres, le Secrétariat des ressources humaines, le Secrétariat du Conseil de gestion, ainsi que dans une proposition faite au Conseil de gestion le 24 août 1988. Il en ressort que le Conseil de gestion avait approuvé la décision d'embauche.

La vérification a révélé des lacunes dans la procédure d'entrevue : M. Chiesa a été le seul à bénéficier d'une entrevue avec un jury complet; le sous-ministre du Logement a rédigé toutes les évaluations et le président du Groupe d'étude sur le logement à prix abordable a revu et approuvé celles qui se rapportaient aux entrevues auxquelles il avait assisté; contrairement à la proposition du Conseil de gestion, tous les candidats n'ont pas bénéficié d'une entrevue avec un jury complet; enfin,

qualifiées s'étaient également présentées et que les premiers entretiens devaient servir à décider non pas de l'octroi du poste, mais de la validité des candidatures. M. Church a informé trois des candidats lors de leur première entrevue que leur candidature ne serait pas retenue.

Le comité s'est ensuite tourné vers le ministre à des experts-conseils et a posé la question de savoir dans quelle mesure la fonction publique de l'Ontario était perçue à l'extérieur comme étant fermée à des personnes qualifiées désireuses d'y entrer. Un membre a émis des réserves très générales sur l'équité des procédures de recrutement dans la fonction publique, en particulier pour les contrats à durée déterminée et les emplois à temps partiel.

Pendant des questions soulevées par le vérificateur, le comité a demandé s'il aurait été possible d'améliorer la procédure eu égard aux circonstances. La réponse de M. Church est la suivante :

Nous aurions dû constituer des dossiers plus complets et le vérificateur, en les examinant, aurait dû pouvoir se rendre compte que les trois autres candidats étaient des candidats qui avaient de bonnes chances dans ce concours.

Le seul élément du rapport du vérificateur auquel je trouve vraiment à redire est sa conclusion. Je pense que le vérificateur fait erreur et je crains que s'il a pu arriver à cette conclusion, c'est que nos dossiers laissaient à désirer.

Le comité s'est attardé sur le sujet de l'équité de la procédure de recrutement, parce qu'il est vraisemblable que le grand public ne soit au courant ni de l'obligation de recruter par voie de concours, ni des procédures applicables à la recherche de candidats.

Le comité formule en conséquence les recommandations suivantes :

1. Que les contrats de travail à l'intérieur de la fonction publique de l'Ontario garantissent l'égalité d'accès et de traitement à tous les candidats, en toutes circonstances. Que les entrevues avec les employés éventuels soient impartiales et leur déroulement normalisé. Que la révision des pratiques d'emploi provinciales soit envisagée, afin de veiller à offrir ces garanties aux futurs employés. Que pareille révision porte aussi sur les procédures suivies pour engager les services d'employés à contrat et d'employés à temps partiel.

Le contrat offert à M. Chiesa (section 6) stipule que l'expert-conseil doit garder le secret sur les renseignements portés à sa connaissance dans le cadre de ces fonctions. Un député, exprimant des réserves quant à la préservation des intérêts de la province, a obtenu comme explication que tout employé doit se soumettre aux règles de confidentialité applicables aux fonctionnaires permanents.

Interrogé sur les critères de recrutement, M. Church a expliqué que des lignes directrices avaient été établies à cet égard en 1986, mais qu'ils n'étaient pas encore au point. Les critères relatifs au concours en question ont été fixés en juillet 1988. Le comité, ayant examiné les changements intervenus dans ces critères entre 1986 et 1989, a averti contre l'établissement de critères en fonction des qualifications particulières d'une personne candidate à un concours. Le ministère insiste que tel n'a pas été le cas ici. M. Church a signalé que le ministère avait essayé pendant plusieurs années de recruter quelqu'un de compétent. L'expérience de M. Chiesa a servi de point de repère pour la simple raison qu'il possédait les qualifications requises. M. Church a ensuite expliqué la procédure de sélection.

Si nous avions trouvé quelqu'un en faisant jouer la concurrence... et d'ailleurs, je répète qu'à la suite des entretiens, j'aurais personnellement aimé poursuivre plus avant avec deux des candidats et les faire passer devant le jury d'examineurs... et si ces personnes avaient été disposées à accepter le poste, alors nous aurions assisté à un véritable concours ouvert comme celui que vous décrivez. Le fait est qu'en faisant jouer la concurrence nous sommes arrivés à un stade où un seul candidat satisfaisait à tous nos critères. Je suis d'accord avec vous qu'il aurait été préférable de procéder autrement si nous l'avions pu. Si cela avait été possible, si nous avions pu choisir entre un plus grand nombre de candidats, la procédure que vous préconisez aurait été préférable, mais les candidats faisaient défaut.

Le comité a poursuivi le débat sur le fait que les qualifications de M. Chiesa avaient servi de « repère ». M. Thompson défend le point de vue que les critères utilisés n'excluaient pas d'autres candidats éventuels et qu'ils n'avaient pas été fixés pour une personne en particulier. M. Church renchérit qu'il n'avait pas à l'esprit une personne en particulier et que le nombre de candidats qualifiés lui avait semble encouragerant. Chaque candidat a été informé que d'autres personnes

proposition n'a été sollicitée des autres candidats et qu'aucun comité n'a été constitué pour l'évaluation des propositions.

M. Thompson a également fait valoir que d'après le rapport du vérificateur, un seul des candidats satisfaisait aux deux principales exigences, à savoir la capacité à remplir les fonctions rattachées au poste et la volonté de travailler dans les conditions posées par le ministère. L'actuel sous-ministre a expliqué qu'après une première évaluation, l'une des candidatures avait été rejetée pour qualifications insuffisantes; deux autres candidats s'étaient désistés à l'idée de travailler au sein de la bureaucratie et de se soumettre à l'obligation de renonciation et de divulgation; enfin, la quatrième personne avait fait savoir qu'il lui serait impossible de se consacrer à ce poste à temps plein.

En réponse aux questions du comité, M. Church a témoigné qu'aucun candidat n'avait bénéficié d'un traitement préférentiel et que le recrutement ne s'était pas effectué auprès d'une seule source. M. Chiesa avait initialement été convoqué à un entretien avec un jury de trois personnes. Le ministère avait proposé aux organismes centraux de ne pas rechercher de candidats auprès d'autres sources, mais d'embaucher M. Chiesa comme employé permanent. Il a toutefois été décidé que ce seul entretien ne constituait pas une épreuve suffisante et qu'il était préférable d'adopter une procédure plus concurrentielle. C'est alors que des critères plus précis ont été définis. L'explication fournie pour l'adoption d'un concours restreint est que l'expérience recherchée n'était pas répandue sur le marché du travail.

La sélection a essentiellement eu lieu en fonction de trois facteurs, à savoir, la nécessité d'éviter tout conflit d'intérêts, l'aspect gestion du contrat et l'absence de personnes possédant l'expérience voulue. M. Church a poursuivi que « les capacités que nous recherchons se trouvent uniquement chez les promoteurs immobiliers ». Le ministère a souligné qu'il était difficile d'attirer vers la fonction publique une personne occupant un rang important dans l'industrie immobilière. Le ministère avait eu du mal à convaincre qui que ce soit de poser sa candidature.

associations en question n'ont pas informé leurs membres de cette procédure de recrutement. Le comité a fait remarquer que d'autres personnes qui n'avaient aucune connaissance directe de la procédure en cours auraient pu manifester un intérêt pour le poste offert s'il avait été annoncé dans le cadre d'une procédure de sélection plus ouverte.

Le comité a consacré plus de temps à la question de savoir si la procédure de recrutement avait été convenable et concurrentielle. Le ministère défend le point de vue que la recherche respectait les directives du Conseil de gestion, même si le nombre limité de candidats disponibles et l'étendue des recherches étaient inhabituels.

Face aux réserves émises à l'égard du traitement juste et équitable de tous les candidats, le ministère a signalé que les personnes qualifiées prêtes à briguer le poste étaient au nombre de quatre, dont M. Chiesa. Le vérificateur a abordé le caractère peu formel des entrevues, menées sous forme de discussion sans la présence de tous les responsables. En fin de compte, le ministère n'a pas été en mesure de convaincre les trois autres personnes de maintenir leur candidature, celles-ci n'ayant pas été « disposées à se soumettre aux limitations de l'emploi... », à savoir l'obligation d'exclusivité, les conditions de travail au sein de la bureaucratie et la réduction de salaire.

Dans sa déclaration préliminaire, M. Thompson a attiré l'attention du comité sur le passage du rapport du vérificateur qui dit « il est fort peu probable que la procédure ... ait pu faire revenir le ministère sur son intention initiale. » Le ministère s'était fixé pour objectif d'engager une personne dont les qualifications et les aptitudes étaient égales ou supérieures à celles de M. Chiesa, et disposée de surcroît à se soumettre à toutes les conditions prescrites.

Trois des quatre candidats satisfaisaient aux critères de façon acceptable, mais les conditions rattachées au poste leur posaient certains problèmes. M. Chiesa était le seul candidat à non seulement satisfaire aux critères, mais à accepter les conditions. C'est pour cela qu'aucune

par contre, le principal obstacle à la recherche était l'absence sur le marché du travail de personnes possédant exactement les qualifications requises.

M. Church a répété que les qualifications requises ne se trouvent que dans les grandes entreprises de promotion de la construction. Les candidats devaient également avoir connaissance des activités et des mécanismes particuliers à l'industrie de la construction dans la région de Toronto.

Le comité a fait remarquer qu'aucune annonce d'emploi n'avait été publiée pendant la procédure de recrutement, à quoi le ministre a répondu que trois des principales associations professionnelles avaient été contactées et que des candidats avaient été trouvés par l'intermédiaire de celles-ci.

M. Church a signalé que les directives du Conseil de gestion établissent qu'une recherche restreinte est acceptable à titre de procédure mettant en jeu la concurrence et qu'un concours ouvert n'aurait pas attiré de candidats valables.

Le comité a ensuite posé la question de savoir si la recherche de candidats n'avait pas été trop limitée, éliminant de ce fait des candidats qualifiés qui auraient pu être attirés par la publication d'annonces d'emploi. L'hypothèse présentée était que le ministre ne pouvait pas déterminer avec certitude si des personnes compétentes se trouvaient sur le marché du travail sans diffuser une annonce quelconque auprès des personnes susceptibles de posséder les qualifications requises. Le ministre a répondu que la procédure suivie était conforme aux directives du Conseil de gestion et qu'il avait envisagé de mener une recherche plus étendue et d'engager les services d'une société de recrutement avant de rejeter ces deux possibilités comme étant inadéquates.

Pour être retenu, le candidat devait avoir une expérience pratique de la situation immobilière à Toronto, bien que les terrains sur lesquels s'étend la compétence du poste soient situés un peu partout en Ontario. Les associations professionnelles consultées avaient permis de repérer des candidats possibles dans l'industrie de la construction, mais leurs présidents avaient de surcroît suggéré des candidats externes. Le ministre n'a pas organisé d'entrevues avec tous les candidats éventuels et les

- définir les fonctions et énoncer les exigences requises des candidats : ces deux documents ont été préparés;
- élaborer une procédure permettant de trouver un certain nombre de candidats éventuels : des démarches dans ce sens ont été effectuées auprès du personnel compétent du gouvernement provincial et de plusieurs experts de l'industrie du bâtiment;
- arrêter les critères d'évaluation obligatoires.

Les membres d'un jury constitué à cette fin ont passé en revue la liste des candidats et les critères

d'évaluation.

Comme le souligne le rapport de vérification, les « procédures d'acquisition concurrentielles » servent à garantir le meilleur rapport qualité-prix, ainsi que l'équité d'emploi. Le vérificateur est d'avis qu'un concours ouvert, auquel peut se présenter toute personne compétente intéressée par le poste offert, est en général reconnu comme étant la procédure la plus juste et donc préférable à toute autre.

Le sous-ministre du Logement a fait valoir, d'une part, que le poste en question exigeait des qualifications très spéciales et, d'autre part, qu'il était assorti de conditions particulières et qu'un concours ouvert n'aurait de ce fait eu que peu d'utilité. Bien qu'au départ, il ait pu y avoir une certaine urgence à combler le poste, la durée à prévoir en temps normal pour un concours ouvert n'aurait pas posé de problème, étant donné que le poste n'a en fin de compte été comblé qu'en mai 1989. Comme le révèle la vérification, le Conseil de gestion approuve des procédures autres que le concours ouvert, et notamment la procédure retenue qui consistait à présélectionner cinq candidats éventuels.

Interrogé par le comité sur sa décision de ne pas procéder par voie de concours ouvert et la possibilité que cela ne donne naissance à des conflits d'intérêts, le ministre a affirmé que ses procédures d'adjudication de contrats ne contribuaient en rien à créer des situations de ce genre. Le contrat de M. Chiesa aborde clairement la question des conflits avec ses responsabilités contractuelles. D'après M. Church, les exigences relatives aux intérêts immobiliers d'un candidat sont très générales,

Le sous-ministre actuel a fait valoir que la directive en question ne suggère pas qu'il n'existe qu'une seule procédure préconisée. Une autre procédure mettant en jeu la concurrence, acceptable aux termes des directives du Conseil de gestion, est d'organiser un concours restreint, c'est-à-dire auquel ne participent qu'un certain nombre de candidats présélectionnés possédant les qualifications requises. À la fin de sa déclaration d'entrée en matière, M. Thompson a dit qu'il était convaincu que la procédure suivie respectait les conditions du Conseil de gestion et qu'elle était par ailleurs raisonnable et sérieuse.

La procédure de sélection

M. Chiesa a été sélectionné en 1986 comme candidat éventuel. Les quatre autres candidats ont été repérés à la suite de réunions avec des cadres supérieurs du ministère et des associations professionnelles de l'industrie du bâtiment.

Quatre candidats, en dehors de M. Chiesa, dont l'entrevue avait eu lieu en mai 1988, ont été convoqués pour un entretien en août 1988. Le sous-ministre du Logement s'est entretenu avec chacun de ces candidats, mais le président du Groupe d'étude sur le logement à prix abordable n'était présent qu'à trois des quatre entrevues. L'évaluation des candidats s'est faite selon les critères établis par le ministère (annexe C) en vue de l'attribution d'un contrat sur deux ou trois ans, assorti d'un salaire annuel de 116 700 \$. Les conditions suivantes ont par ailleurs été imposées aux candidats :

« cesser, pendant toute la durée du contrat, toute activité comme promoteur de construction en Ontario et toute relation avec un promoteur ayant des activités en Ontario »;

« divulguer tout intérêt direct ou indirect dans le marché immobilier de l'Ontario et dans des entreprises ayant un intérêt dans le marché immobilier ou dans des projets de construction d'habitations, et faire état de tout contact avec pareille entreprise. »

L'actuel sous-ministre a expliqué lors des audiences que les éléments indispensables à la mise en oeuvre d'un concours juste et équitable étaient au nombre de trois :

d'experts-conseils externes dans le domaine de la création de logements à prix abordable pour un montant maximal de 350 000 \$ sur une période de trois ans.

Les directives du Conseil de gestion soumettent le recours à des experts-conseils à certaines

conditions :

- définition de la tâche, justification et approbation du contrat par un cadre supérieur;
- énoncé des attributions;
- confirmation de la nécessité d'avoir recours à un fournisseur externe;
- respect des procédures d'acquisition de services par voie de concours.

Selon le vérificateur, la quatrième condition n'a pas été respectée à tous les égards.

Dans sa soumission au Conseil de gestion, le ministre dit avoir cherché et trouvé une personne (un expert-conseil) travaillant dans le domaine de l'habitation résidentielle et ajouté avoir consulté le ministre des Services gouvernementaux pour savoir si le candidat retenu pouvait convenir.

Le ministre a rapporté les grandes lignes de la procédure de recherche et d'entrevues, à la suite de laquelle, en septembre 1988, le Conseil de gestion a approuvé le recrutement d'un expert-conseil pour une période de deux ans, avec la possibilité d'un an de prolongation, pour un coût maximal de 350 000 \$.

M. Thompson a expliqué que la procédure suivie était conforme aux directives du Conseil de gestion sur la manière d'engager les services d'experts-conseils. Selon M. Thompson, la directive du Conseil de gestion traitant des services d'experts-conseils est énoncée comme suit :

l'engagement d'experts-conseils se fait dans la mesure du possible par voie de concours en vue d'obtenir le meilleur rapport qualité-prix.

Les organismes centraux sont convenus que ce poste était plus proche d'un poste d'expert-conseil que d'un emploi permanent.

Pour ce qui a trait à la prolongation du contrat de M. Chiesa, M. Thompson a expliqué qu'elle nécessiterait l'approbation du Conseil de gestion et que cette approbation constituerait la première étape d'un concours. Le Conseil devrait alors rappeler la « durée limitée » du contrat et insister sur l'obligation d'accomplir les tâches requises par le contrat pendant la durée précisée. À supposer qu'à l'expiration du contrat, le poste soit transformé en poste permanent, il serait nécessaire de le rattacher à une catégorie et de publier une annonce d'emploi. L'emploi permanent ne serait pas automatiquement offert à M. Chiesa : celui-ci devrait au contraire se soumettre à la procédure de recrutement habituelle.

Le comité a exprimé des réserves quant à la longueur des contrats d'experts-conseils accordés par le gouvernement. Selon M. Temple, la plupart des contrats portent sur deux ans, et rares sont ceux qui durent plus de 36 mois, durée maximale estimée nécessaire pour accomplir une tâche donnée.

Lors de la discussion sur la possibilité d'avoir recours à une firme d'experts-conseils professionnels, M. Church a déclaré que le ministère du Logement ne voulait traiter qu'avec des personnes

connaissant elles-mêmes bien l'industrie du bâtiment et que par ailleurs, une firme d'experts-conseils n'aurait guère pu satisfaire aux exigences en matière de conflit d'intérêts, de gestion de projets et de négociation d'affaires immobilières complexes.

L'approbation du Conseil de gestion

Les contrats pour services d'expert-conseil dépassant 250 000 \$ sont soumis à l'approbation du Conseil de gestion. En août 1988, le ministère a demandé l'autorisation de retenir des services

du Logement, au secrétaire du Conseil des ministres et au sous-ministre du Secrétariat des ressources humaines.

La sous-ministre du Secrétariat des ressources humaines a informé son homologue au ministère du Logement des différentes options envisageables pour procéder à cette embauche, ainsi que des approbations requises. Elle a également fait valoir qu'il était nécessaire d'obtenir l'approbation du Conseil de gestion du gouvernement pour la création du poste de conseiller spécial au logement à prix abordable.

L'option contrat de rémunération des services

Le sous-ministre du Logement a reçu pour instructions d'une part, d'établir pour le poste un « contrat de rémunération des services » et non un « contrat de travail salarié » et, d'autre part, de prendre en considération plusieurs candidats. Suivant ces instructions, le sous-ministre a adapté les critères de sélection, les conditions et les directives.

M. Thompson a témoigné qu'à l'issue de consultations avec les organismes centraux, la décision fut prise que la meilleure façon de retenir des services et des conseils techniques pour étudier la création de logements à prix abordable était d'engager un expert-conseil à contrat. En 1989, les contrats attribués par le ministère du Logement à des experts-conseils ont fait l'objet d'une vérification interne qui a révélé qu'ils étaient conformes aux directives du Conseil de gestion.

Interrogé par le comité sur la décision prise quant à la nature du contrat, M. Church a fourni les explications suivantes :

malgré la proposition initiale du [ministère du] Logement que ce poste soit salarié, nous avons suivi le conseil d'évaluer ce poste en fonction de ses responsabilités, de sa durée limitée, (cet élément étant, en passant, décisif) et des qualifications très spéciales qu'il requiert, d'où la conclusion que la meilleure solution était un contrat de rémunération des services. Ce poste doit servir à élaborer des politiques, des procédures et des méthodes pouvant à

PROCÉDURE DE RECHERCHE DE CANDIDATS

La présente section du rapport aborde plusieurs sujets, notamment : comment le ministère en est venu à considérer la candidature de M. Chiesa; les critères retenus pour la procédure de sélection; la méthode employée pour la présélection des candidats et enfin, l'organisation des entrevues. L'entrevue formelle avec M. Chiesa, menée par trois représentants du gouvernement provincial, a eu lieu le 18 mai 1988. M. Chiesa a pris ses fonctions au ministère du Logement le 1^{er} mai 1989.

Les entretiens préliminaires (1986)

La recherche de candidats a dans un premier temps été limitée aux gouvernements provincial et fédéral. Le sous-ministre du Logement connaissait déjà M. Chiesa, celui-ci ayant été auparavant employé par la Société canadienne d'hypothèques et de logement (SCHL). Selon M. Church, la candidature de M. Chiesa avait été proposée par un dirigeant de la SCHL et par le directeur de la politique de logement du ministère du Logement. M. Church s'était entretenu en 1986 avec le ministre du Logement de la candidature de M. Chiesa.

À la suite de discussions avec la SCHL, le détachement de M. Dino Chiesa au gouvernement provincial avait obtenu un accord de principe, mais M. Chiesa choisit de travailler dans le secteur privé. M. Church a souligné qu'il n'existait aucune relation antérieure avec M. Chiesa.

L'option contrat de travail salarié

Le 20 juin 1988, le sous-ministre adjoint a adressé une lettre au secrétaire associé au Conseil des ministres chargé des ressources en personnel cadre, dans laquelle il a fait état de sa décision d'embaucher M. Chiesa pour un contrat de trois ans comme conseiller spécial au logement à prix abordable. Des copies de cette lettre, justifiant la décision en question, ont été envoyées au ministre

concrète à l'appui de notre conclusion et le ministère soutient avec force la position contraire. Néanmoins, nous trouvons qu'il serait très difficile pour un observateur impartial d'arriver à une conclusion différente de la nôtre.

Nous sommes par ailleurs d'avis que le ministère a opté en faveur de M. Chiesa parce qu'il était fermement convaincu que parmi les personnes disponibles, M. Chiesa était le meilleur, sinon le seul, à présenter à la fois les qualifications requises pour le poste et la volonté d'accepter les conditions du ministère.

Les recommandations du comité

Dans ce rapport, le comité a formulé plusieurs recommandations visant à assurer un traitement juste et équitable de tous les candidats à la fonction publique de l'Ontario, le respect absolu des directives du Conseil de gestion du gouvernement, et la constitution d'un dossier tout au long de la procédure de recrutement pour justifier les décisions prises en toutes circonstances.

CONCLUSIONS GÉNÉRALES DU VÉRIFICATEUR PROVINCIAL ET RECOMMANDATIONS DU COMITÉ

Les conclusions du vérificateur provincial

Comme l'explique le rapport de vérification, tous les documents pertinents du ministère du Logement ont été examinés et des entretiens ont eu lieu avec toutes les personnes ayant participé à la procédure de recrutement. Ces entretiens sont à l'origine de tout ou partie de certains commentaires et conclusions.

Le texte intégral du rapport du vérificateur provincial est joint en annexe D. Pour plus de commodité, les conclusions énoncées dans le sommaire de ce rapport sont reprises ci-dessous.

- La procédure de recrutement était conforme aux directives du conseil de gestion en matière de recrutement de services d'expert-conseil.
- Bien que le recrutement par concours ouvert soit préconisé, aucun concours n'a eu lieu pour l'attribution du poste en question. Bien que la décision de ne pas organiser de concours soit contestable, il n'en demeure pas moins que la procédure de recrutement retenue était conforme aux directives. Nous avons constaté certains écarts par rapport aux normes prescrites, toutefois, ceux-ci ont reçu au moins l'accord tacite du conseil de gestion.
- Nous avons émis des réserves quant à la mise en pratique de la procédure utilisée. À notre avis, elle laissait fortement à désirer sur un point important, à savoir celui de faire état d'un traitement juste et équitable de tous les candidats retenus.

Le ministère était bien décidé à faire appel aux services de M. Chiesa dès le printemps de 1988. D'après le ministère, M. Chiesa mieux que toute autre personne pouvait faire état des qualifications exigées et de la volonté de respecter les conditions d'emploi du ministère. À l'origine, le ministère avait proposé d'embaucher M. Chiesa comme employé permanent.

• Début août 1988, après avoir pris conseil auprès du Secrétariat des ressources humaines et de plusieurs hauts fonctionnaires, le ministère opta en faveur d'un contrat d'expert-conseil plutôt que d'un contrat d'emploi permanent pour ce qui est des services en question. Toutefois, il n'y a guère d'indices concrets que le ministère serait revenu sur sa conviction que M. Chiesa était la personne idéale pour ce poste. D'après nous, il est fort peu probable que la procédure, qui a abouti après plusieurs mois à l'attribution d'un contrat d'expert-conseil à M. Chiesa, ait pu faire revenir le ministère sur son intention initiale.

• L'examen de cette question nous amène inévitablement à conclure que le ministère était bien décidé à engager les services de M. Chiesa pour ce poste, et cela dès le départ aussi bien que pendant toute la durée de la procédure de recrutement. Nous n'avons aucune preuve

INTRODUCTION

Le 29 juin 1989, le comité permanent des comptes publics a adopté une motion donnant instruction au vérificateur provincial de procéder à la vérification du recrutement de M. Dino Chiesa en qualité de conseiller du ministère du Logement. Les attributions ainsi données au vérificateur provincial étaient les suivantes :

Que le vérificateur provincial procède immédiatement à la vérification de la procédure ayant abouti à l'attribution, par le ministère du Logement, d'un contrat d'expert-conseil à Dino Chiesa; cette vérification devra nécessairement, mais pas exclusivement, porter sur l'acquisition de services par voie de concours, l'équité d'accès pour tous les fournisseurs de services d'expert-conseil et le traitement de ceux-ci, et enfin sur les documents permettant d'établir le bien-fondé de l'attribution du contrat, entre autres les approbations du conseil de gestion.

En mai 1989, le ministère du Logement a embauché M. Dino Chiesa comme conseiller spécial pour le groupe d'étude sur le logement à prix abordable, le chargeant de contribuer à l'élaboration d'une politique de logement à prix abordable. Aussi bien le ministère du Logement que celui des Services gouvernementaux avaient qualifié ce poste d'important.

Le rapport du vérificateur rappelle que l'objectif de la nouvelle politique « Priorité au logement » est de libérer à des fins résidentielles les terres de la Couronne dont celle-ci n'a pas besoin, tandis que la politique de partage équitable (Fair Share Policy) vise à promouvoir et faciliter la création de logements à prix abordable. Le programme « Priorité au logement », qui découle de la politique du même nom, est administré conjointement par le ministère du Logement et le ministère des Services gouvernementaux. Ce dernier établit un plan conceptuel d'utilisation des terres excédentaires propres à la création de logements, en tenant compte des suggestions du ministère du Logement. Le programme « Collaboration et association », qui s'inscrit dans le cadre de la politique de partage équitable (Fair Share Policy), encourage le secteur privé à construire des habitations à prix modéré, qu'il s'agisse de logements locatifs ou de logements résidentiels en propriété privée.

PRÉAMBULE

Le comité permanent des comptes publics s'est réuni le 26 octobre 1989 pour discuter de la vérification du contrat passé entre le ministère du Logement et M. Dino Chiesa. Représentaient le ministère le sous-ministre du Logement, ainsi que l'un de ses prédécesseurs, désormais sous-ministre des Affaires municipales au Bureau de la région du grand Toronto; le trésorier adjoint et sous-ministre de l'Économie au ministère du Trésor et de l'Économie, lui-même ancien sous-ministre du Logement, ainsi que le directeur général de la gestion des ressources générales du ministère.* M. Douglas F. Archer, vérificateur provincial, et M. N.J. Mishchenko, directeur, direction des attributions spéciales, Bureau du vérificateur provincial.

Ce rapport s'appuie principalement sur la vérification effectuée par le Bureau du vérificateur provincial, ainsi que sur l'audience tenue à Queen's Park, dans la ville de Toronto. Le présent rapport fait plusieurs références à la déclaration déposée, le 26 octobre 1989, auprès de la greffière du comité permanent des comptes publics par l'actuel sous-ministre du Logement, M. Glenn Thompson. La lecture du texte original de cette déclaration ou de sa transcription dans le Journal des débats pourrait contribuer à élucider la position prise par le ministère du Logement.

* Personnes présentes :

Thompson, Glenn R., sous-ministre, ministère du Logement;
Church, Gardner, ancien sous-ministre, Bureau de la région du grand Toronto, ministère des Affaires municipales;
Davies, Bryan, ancien sous-ministre; trésorier adjoint et sous-ministre de l'Économie, ministère du Trésor et de l'Économie;
Temple, J. Arnie, directeur général, gestion des ressources générales

TABLE DES MATIÈRES

Page n°

PRÉAMBULE 1

INTRODUCTION 2

CONCLUSIONS GÉNÉRALES DU VÉRIFICATEUR PROVINCIAL
ET RECOMMANDATIONS DU COMITÉ 3

Les conclusions du vérificateur provincial
Les recommandations du comité 4

PROCÉDURE DE RECHERCHE DE CANDIDATS 5

Les entretiens préliminaires (1986)
L'option contrat de travail salarié
L'option contrat de rémunération des services 5

L'approbation du Conseil de gestion
La procédure de sélection 6

Les problèmes inhérents aux entrevues
Le délai d'embauche 9

LISTE DE RECOMMANDATIONS 18

ANNEXE A : Attributions du Comité permanent des comptes publics

ANNEXE B : Ordre du jour des audiences

ANNEXE C : Critères de sélection des candidats, ministère du Logement

ANNEXE D : Rapport du vérificateur provincial sur la vérification
du contrat de M. Dino Chiesa



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Ray McLellan
Agent de recherche



L'honorable Hugh Edgihoffer, député,
Président de l'Assemblée législative.

Monsieur,

Votre comité permanent des comptes publics a l'honneur de présenter son rapport,
qu'il confie à l'Assemblée.

Le président,

A stylized, handwritten signature in dark ink, likely belonging to Ed Philip.

Ed Philip, député

STANDING COMMITTEE ON
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COMITÉ PERMANENT SUR
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RAPPORT SPÉCIAL
SUR LE CONTRAT
ENTRE
LE MINISTÈRE DU LOGEMENT
ET M. DINO CHIESA

2^e session, 34^e Législature
39 Elisabeth II

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**STANDING COMMITTEE
ON PUBLIC ACCOUNTS**



**SPECIAL REPORT
ON
MINISTRY OF HOUSING
CONTRACT WITH
MR DINO CHIESA**

C O R R I G E N D U M

Appendix B should be replaced with the attached pages.

MINISTRY OF HOUSING
AUDIT OF CONTRACT WITH DINO CHIESA



OFFICE OF THE PROVINCIAL AUDITOR

Box 105, 15th Floor, 20 Dundas St. West

Toronto, Ontario M5G 2C2

(416) 971-9366

**The Chairman and Members,
Standing Committee on Public Accounts**

Pursuant to a motion passed by the Committee at its June 29, 1989 meeting, we have completed, and are attaching, a Report on our Audit of the Contract with Dino Chiesa.

**Toronto, Ontario,
October 6, 1989.**

A handwritten signature in dark ink, appearing to read "D.F. Archer".

**D.F. Archer,
Provincial Auditor.**

TABLE OF CONTENTS

	Page
SUMMARY	
PURPOSE OF AUDIT	1
CONCLUSIONS AND FINDINGS	1
BACKGROUND	2
COMMENTARY	
HIRING PROCESS	3
Employment/Salary Contract Proposal	3
Fee for Service/Consulting Contract Alternative	3
Interview Procedure	4
Management Board Approval	4
Compliance with Administrative Directives	5
Open Competition	5
Written Proposals	6
Interview Procedure	6
Hiring Delayed	7
Summation	7
ADDITIONAL MATTERS	8
APPENDICES	
A. LIST OF PEOPLE INTERVIEWED	
B. CHRONOLOGY OF EVENTS	
C. SUMMARY OF RESPONSIBILITIES OF SPECIAL ADVISOR, HOUSING ADVOCACY	

SUMMARY

PURPOSE OF AUDIT

At its June 29, 1989 meeting the Standing Committee on Public Accounts passed a motion requesting the Provincial Auditor to:

"immediately conduct an audit of the process used to award a Ministry of Housing consulting contract to Dino Chiesa; and that the audit terms of reference should specifically include, but not be limited to, an evaluation of the competitive acquisition procedure, fair access for vendors of consulting services, treatment of vendors, assignment substantiation and documentation such as Management Board approvals."

Our review consisted of examining all relevant documentation at the Ministry of Housing as well as interviews and discussions with a number of individuals who had some involvement in the process (see Appendix A).

The purpose of the interviews and discussions was to obtain as much information as possible to properly respond to the Committee's request. Accordingly, certain conclusions and comments are partially or totally based on interviews with the key people involved.

CONCLUSIONS

- The process followed was within the parameters of the Management Board directives and guidelines regarding the purchase of consulting services.

An open competition, the preferred competitive selection procedure, was not held for this position. While the decision not to do so was debatable, the competitive procedure that was followed was acceptable under the directives and guidelines. Some deviations from prescribed practice did occur; however, they were given at least tacit Management Board approval.

- We were concerned with the manner in which the adopted procedure was conducted. In our opinion, it fell considerably short in one significant respect, namely, demonstrating fair and equitable treatment of all considered candidates.
- The Ministry was intent on acquiring the services of Mr. Chiesa as early as the spring of 1988. In its view he was the individual who would best combine the qualifications for the new assignment and the willingness to accept the Ministry's terms and conditions. The Ministry originally proposed hiring Mr. Chiesa on an employment contract.

As a result of advice from the Human Resources Secretariat and other senior officials, in early August 1988 the Ministry decided to engage the required services on a consulting contract rather than on an employment contract basis. However, there was little evidence to suggest any change in its conviction that Mr. Chiesa was the right individual for the job. In our view the process followed, culminating several months later in the award of a consulting contract to Mr. Chiesa, was unlikely to have deterred the Ministry from fulfilling its original intent.

BACKGROUND

On April 6, 1988, Cabinet approved a revised Housing First Policy to use surplus Government land for housing purposes, as well as a Fair Share Policy designed to actively promote, facilitate and remove obstacles to the production of affordable housing.

The Housing First Program, an initiative under the Housing First Policy, is the shared responsibility of the Ministries of Housing and Government Services. If any surplus land has housing potential, the Ministry of Government Services, with advice from the Ministry of Housing, develops a proposed concept plan for its development.

The Housing Partnership and Coalitions Program is an initiative under the Fair Share Policy. This program encourages the private sector to build lower cost ownership and rental housing.

These new initiatives are the responsibility of the Housing Advocacy Task Force, of the Ministry of Housing.

In order to overcome the impediments to affordable housing, both the Minister of Housing and the Minister of Government Services had identified an urgent need for a Special Advisor on Housing Advocacy.

It was for this position that Dino Chiesa was hired.

COMMENTARY**HIRING PROCESS**

Although Dino Chiesa began working for the Ministry of Housing effective May 1, 1989, the process leading up to his engagement started a year earlier.

Mr. Chiesa had been employed in a senior capacity with Canada Mortgage and Housing Corporation (CMHC) for a number of years. Gardner Church, then Deputy Minister of Housing, knew of Mr. Chiesa through the Ministry of Housing's ongoing dealings with CMHC and, as a result of this association, had been interested in him for some time. Following some preliminary discussions with Mr. Church, Mr. Chiesa was formally interviewed on May 18, 1988 by Gardner Church, Robert Riggs, Assistant Deputy Minister, Realty Group, Minister of Government Services, and Tom Zizys, Chairman of the Housing Advocacy Task Force who was on secondment from the Premier's office.

Employment/Salary Contract Proposal

On June 20, 1988 Mr. Church wrote to Pat Jacobsen, then Associate Secretary of Cabinet for Executive Resources, indicating that he would like to offer Dino Chiesa a three year employment contract at the Assistant Deputy Minister salary level in the position of Special Advisor on Housing Advocacy.

He stated that both the Ministries of Housing and Government Services were satisfied that Mr. Chiesa was the right person for the job, and that no one in the public service had the necessary background for the task at hand.

Copies of this letter were sent to the Honourable Chaviva Hosek, then Minister of Housing; Robert Carman, then Secretary of the Cabinet; and Dr. Elaine Todres, Deputy Minister of the Human Resources Secretariat.

At that time, the only person being considered for the position was Dino Chiesa. In fact, no other individual had been interviewed.

On July 11, 1988 Dr. Todres replied to Mr. Church's letter and advised that if Mr. Chiesa were to be hired under an employment contract he would have to be appointed to an established position. Accordingly, the approval and establishment of the position of Special Advisor, Housing Advocacy by Management Board would be a prerequisite for any hiring. Several other possible options under which Mr. Chiesa could be hired were also outlined but each would require approval by an appropriate body (e.g. the Civil Service Commission).

Fee for Service/Consulting Contract Alternative

In subsequent discussions with Dr. Todres, Mr. Sloan and Ms. Jacobsen, Mr. Church was advised to proceed on a fee for service contract basis rather than on the employment contract basis originally proposed. He was further advised that several candidates should be considered for the job.

Mr. Church expressed acceptance of this advice in a letter dated August 3, 1988. He also indicated in this letter that his Minister had asked that the method of recruiting and retaining an individual for the position be free from any possible

conflict of interest concerns. The letter contained a full description of the selection criteria and conditions applicable for the position, including those pertinent to matters of conflict of interest.

Mr. Church indicated in his letter of August 3 that he had surveyed several leaders in the development industry for advice as to potential candidates for the position. Through this process, and his own knowledge of the industry, Mr. Church developed a short list of five individuals, one of whom was Mr. Chiesa. Mr. Church stated that each of the other four candidates would be interviewed. (Mr. Chiesa had previously been interviewed in May).

Interview Procedure

Mr. Church had preliminary discussions with the other four candidates and interviews were arranged with each of them during the period August 4 - August 11, 1988. Three of the four individuals were interviewed by Mr. Church and Mr. Zizys. The other candidate was interviewed by Mr. Church.

The candidates were assessed against the criteria Mr. Church had set for the position. These criteria included land and residential housing development experience; knowledge of, and competence in dealing with government; negotiating skills, particularly related to complex development projects; credibility with and knowledge of the industry; and project management experience. The candidates would also have to be willing to accept the terms of the assignment, a two to three year contract at approximately \$116,000 per year.

In addition to meeting these terms, the successful candidate would be required to accept the following conditions:

- "end all development activities in Ontario or in conjunction with any developer who is active in Ontario for the life of the contract"; and
- "fully disclose all direct or indirect interests in real estate in Ontario and in companies with interests in real estate or housing development, and further to disclose all contacts with any such company."

We were told by Mr. Church that three of the four candidates generally met the criteria established. However, the willingness to accept the terms and conditions of the assignment was evidently a major stumbling block. Mr. Church advised us that, had more than one candidate fulfilled all the requirements, proposals would have been requested and a panel established to review them. This was not necessary as, according to Mr. Church, Mr. Chiesa was the only candidate who met the criteria and could be hired on terms and conditions acceptable to the Ministry.

Management Board Approval

The acquisition of consulting services with potential cost in excess of \$250,000 requires Management Board approval. Accordingly, on August 24, 1988 the Ministry requested approval from Management Board to engage the services of an external consultant to direct implementation of activities under the Housing

Advocacy initiative. The period of the engagement was to be three years with maximum cost over the period not to exceed \$350,000.

In its submission to Management Board, the Ministry stated that it had successfully completed a search for a qualified individual/consultant presently active in the residential housing field. The Ministry also stated that the Ministry of Government Services had been consulted concerning the acceptability of the selected candidate.

The Ministry briefly outlined for Management Board the survey and interview process by which it had arrived at a selection. This outline included reference to the development of a short list of five candidates. However, none of them, including the successful individual, was specifically identified in the submission.

On September 13, 1988 Management Board approved the engagement of a consultant for the purpose requested by the Ministry. The approval specified a contract for a two year term with an option for a twelve month extension, at a total cost not to exceed \$350,000.

Compliance with Administrative Directives

Management Board Directives stipulate various requirements for Ministries to follow when obtaining consulting services, including:

- Definition, justification and senior level approval of the assignment
- Development of Terms of Reference
- Establishment of the need for external resourcing
- Adherence to competitive acquisition procedures

In our view, the first three requirements were met (see Appendix C for Terms of Reference). However, to some extent the last was not.

Open Competition

Competitive acquisition procedures help to ensure that the best value is received for the money spent. They also are seen as promoting fairness in the marketplace.

An open competition, in which anyone qualified and interested in the assignment can apply, is generally considered the fairest and, therefore, the most desirable procedure to follow. With regard to the Housing Advocacy position, Mr. Church felt there weren't many individuals who had the required background and who would be willing to work in Government under the terms and conditions the Ministry required. Therefore, he did not believe any useful purpose would be served by having an open competition.

Open competitions usually take considerable time to complete. A perceived urgency to fill the position may also have influenced the decision not to follow this course. However, in hindsight, given that the position was not actually filled until May 1, 1989, it is difficult to appreciate what would have been lost by holding an open competition.

Other competitive procedures are acceptable under Management Board guidelines. One such procedure is the determination of a number of candidates who have the necessary qualifications and limiting the competition to that selected group. It was this course of action that the Ministry elected to follow in this instance. Five candidates were selected, including Mr. Chiesa.

Written Proposals

Procedures prescribed by Management Board Directives require that written proposals be requested from each candidate in every competition, and that such proposals be formally evaluated. The Ministry did not proceed on this basis. As noted earlier, however, it did maintain that it would have done so had more than one candidate met all the requirements at the interview stage.

Because of the somewhat unique approach adopted in the hiring of the Special Advisor, Housing Advocacy, particularly in respect of written proposals, Management Board approval of the overall process was certainly warranted. Direct formal approval was not obtained. However, the Ministry's proposed action had been disclosed in correspondence and discussion with senior officials of the Cabinet Office, Human Resources Secretariat and Management Board Secretariat. In addition, the procedure followed was fully described in the submission to Management Board on August 24, 1988, upon which the Board based its approval dated September 13. In these circumstances it would be difficult to argue that Management Board had not, in effect, given tacit or informal approval to the Ministry's action.

Interview Procedure

We felt that the interview procedure left much to be desired. For example:

- Only one candidate, Mr. Chiesa, was interviewed by what would be considered a full panel, composed of senior representatives from the Ministries of Housing and Government Services, and from the Task Force on Housing Advocacy.

Three candidates were interviewed by two officials only, Mr. Church and Mr. Zizys. The other candidate was interviewed only by Mr. Church.

- We reviewed the evaluation information available for the four candidates other than Mr. Chiesa and noted that all had been prepared by Mr. Church. We contacted Mr. Zizys and were advised that he had reviewed the evaluations for the candidates he had interviewed and agreed with Mr. Church's ratings.
- In its submission to Management Board on August 24, 1988 the Ministry stated that all candidates had been rated by representatives of the Ministry of Housing, the Ministry of Government Services and the Office of the Premier. In the light of actual events this statement is considerably exaggerated.
- The nature and completeness of the interviews was open to question. In this regard we spoke to one of the other four candidates. He confirmed that there had been general discussions with Mr. Church and a meeting

with Mr. Church and Mr. Zizys to review what the Ministry was looking for. However, in his mind it was not a formal interview for a job and no specifics were discussed.

The interview procedure followed did not treat all selected candidates equally. Unequal treatment would result in unfair treatment if more than one of the candidates possessed the necessary qualifications and the willingness to accept the Ministry's terms and conditions. According to the Ministry only one did. However, we found the evidence available inconclusive in this respect.

Hiring Delayed

Initially, it was the Ministry's intention to have the Special Advisor, Housing Advocacy in place by October 1, 1988. However, in September 1988, a new Deputy Minister (Bryan Davies) was appointed to the Ministry. He informed us that being new to the Ministry, he wanted to assure himself of the need for a Special Advisor and, if so, that there was nobody already employed by the Province who could do the job. He also wanted to satisfy himself regarding the specific terms of reference.

Mr. Davies indicated that he met with Mr. Chiesa on September 13, 1988, after Management Board approval was received for engaging a consultant. In early October 1988, Mr. Davies telephoned Dino Chiesa and advised him that he would not be filling the position immediately.

Subsequently the Ministry decided to proceed with the consulting assignment. On December 13, 1988 Mr. Davies met with Dino Chiesa to discuss a contract. A contract was signed on January 31, 1989.

Mr. Chiesa began his assignment on May 1, 1989, some three months later. The delay was to enable Mr. Chiesa to conclude any work in process at his former employers and to divest himself of any investments or arrangements which may have been in conflict with his responsibilities at the Ministry of Housing.

Summation

As a result of our review of this matter we could only conclude that the Ministry was intent on engaging the services of Mr. Chiesa for this assignment both at the outset and essentially throughout the entire hiring process. We do not have hard evidence to support our conclusion and the Ministry argues strongly to the contrary. Nevertheless, we feel that it would be very difficult for an impartial observer to conclude otherwise.

It is also our opinion that the Ministry's choice of Mr. Chiesa was based on a firm conviction that he was the best, if not the only, individual available who combined the qualifications for the position with the willingness to accept the Ministry's terms and conditions.

For ease of reference a condensed chronology of events which culminated in Dino Chiesa joining the Ministry of Housing is provided in Appendix B to this report.

ADDITIONAL MATTERS

Prior to commencing our audit, reports in the media indicated a business association between Mrs. Patricia Starr, former Chairman of Ontario Place Corporation, and Mr. Chiesa. During our audit we learned that Mrs. Starr had approached individuals regarding Mr. Chiesa: Hon. Chaviva Hosek, Bryan Davies and Tom Zizys. In addition Gardner Church had breakfast meetings with Mrs. Starr on May 5, 1988 and August 9, 1988. Mr. Church indicated that these meetings "could conceivably have been Dino pitches" but couldn't recall. However, he stated he was aware Mrs. Starr thought highly of Mr. Chiesa.

Mrs. Starr acknowledged that she may have spoken to these individuals regarding Dino Chiesa. However, she advised us that it was definitely not her intent to influence or interfere with the hiring process. She was merely interested in seeing that the Ministry hired the best qualified individual for the job.

All four of the individuals advised us that their actions were not influenced in any way by the contacts made. Our review of this matter supports this contention.


We were also informed that Ms. Jacobsen had been contacted by Gordon Ashworth, then Executive Director, Office of the Premier, who suggested that Mr. Chiesa was someone the Ministry of Housing might be interested in. We questioned Mr. Ashworth, but he could not recall specifically who had referred Mr. Chiesa to him. He stated that it was not unusual for names to be referred to him.

Ms. Jacobsen met with Mr. Chiesa and then passed his name onto Mr. Church. This was prior to May 18, 1988, the date Mr. Chiesa was interviewed regarding the position at the Ministry of Housing. Mr. Church told Ms. Jacobsen that he had been considering Mr. Chiesa for a position at the Ministry for some time.

In our opinion, Mr. Chiesa would have been hired with or without the involvement of Mrs. Starr or Mr. Ashworth.

Media reports also indicated that Mr. Chiesa worked in the 1987 election campaign of Ms. Hosek. Our audit disclosed no evidence of any influence exerted by Ms. Hosek in the process leading up to the hiring of Mr. Chiesa.

Toronto, Ontario,
September 29, 1989.


for N.J. Mishchenko, C.M.A.,
Director,
Special Assignments Branch.

LIST OF PEOPLE INTERVIEWED

- Gordon Ashworth Former Executive Director,
Office of the Premier
- Dino Chiesa Special Advisor - Land Development,
Ministry of Housing
- Gardner Church Former Deputy Minister of Housing
- Bryan Davies Former Deputy Minister of Housing
- Hon. Chaviva Hosek Former Minister of Housing
- Pat Jacobsen Former Associate Secretary of Cabinet For Executive Resources
- Robert Riggs Assistant Deputy Minister,
Ministry of Government Services
- John Sloan Secretary of the Management Board
- Patricia Starr Former Chairman,
Ontario Place Corporation
- Tom Zizys Chairman,
Housing Advocacy Task Force
(on secondment from the Premier's Office)

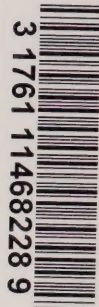
CHRONOLOGY OF EVENTS

April 6, 1988	Cabinet approved a revised Housing First Policy.
May 18, 1988	Dino Chiesa was interviewed by Gardner Church, Tom Zizys and Robert Riggs.
June 20, 1988	Gardner Church sought advice from the Associate Secretary of Cabinet for Executive Resources and from the Human Resources Secretariat on the procedure necessary to hire Dino Chiesa.
July 11, 1988	The Deputy Minister of the Human Resources Secretariat responded to Gardner Church's June 20th letter.
August 3, 1988	Gardner Church wrote to Mr. Sloan, Dr. Todres and Ms. Jacobsen, regarding the hiring of a Special Advisor - Housing Advocacy and the selection process to be used.
August 4-11, 1988	The other four candidates for the position were interviewed. Dino Chiesa was not interviewed again.
August 24, 1988	The Ministry of Housing made a submission to Management Board to request approval to engage the services of an external consultant. The submission was signed by Gardner Church and the Hon. Chaviva Hosek.
Sept. 13, 1988	Management Board approved the hiring of a consultant for the Housing Advocacy initiative for a two year contract with a 12 month option. Total three-year cost is not to exceed \$350,000.
January 31, 1989	Contract was signed between the Ministry and Dino Chiesa for a fee of \$116,700 per year plus travel expenses and other reasonable disbursements as approved by the Deputy Minister. This contract was to commence on April 1, 1989.
March 31, 1989	The contract was amended, changing the starting date to May 1, 1989.
May 1, 1989	Dino Chiesa commenced his assignment at the Ministry.

SUMMARY OF RESPONSIBILITIES OF SPECIAL ADVISOR, HOUSING ADVOCACY

1. Manage the Housing Advocacy Task Force by: designing the full organization of the Task Force; acquiring and training staff; developing work plans and schedules for Task Force activities; directing and monitoring staff in the execution of the work plans; ensuring that financial, human resource, and administrative policies are followed; monitoring, evaluating, and reporting on the results achieved under various Housing Advocacy initiatives.
2. Negotiate with other Ministries, municipalities, and the Federal Government to identify and declare lands for use under the Housing First Policy. Where possible, identify land disposal or development strategies that could be modified to support the objectives of the Housing First Policy, such activities to be undertaken in conjunction with the Ministry of Government Services.
3. Facilitate the development of proposals and plans for site-specific parcels of land to ensure that the 25 per cent guideline is adhered to when lands are other than Provincially owned. This activity will be undertaken jointly by the Government Land Group and the Partnerships and Coalitions Group.
4. Co-ordinate with the Ministry of Government Services, an assessment of what can be done to maximize the use of either Provincially owned lands or other lands, through development or redevelopment, with mixed-use housing forms.
5. Co-ordinate within the Ministries of Housing, Government Services, and Municipal Affairs, partnerships with municipalities or the Federal Government as they relate to Housing First initiatives on government-owned lands.
6. Liaise with the Special Advisor to the Premier - Waterfront Development, and the Chairman of the Greater Toronto Area Committee, to ensure continuity and consolidation of approaches in the efforts being undertaken by all groups.
7. Liaise with the private sector and community interest groups to urge their participation in Housing First initiatives and their development of related projects.
8. Recommend measures to enhance and facilitate the delivery of Housing First initiatives on all lands.
9. Identify constraints to the designation of lands in the Greater Toronto Area for housing (especially socially assisted projects), and propose ways in which such constraints could be overcome.
10. Co-ordinate with the Special Advisor on Municipal Support for Housing, the rapid processing and approval through the Ministries of Housing and Municipal Affairs of land use changes which support the Housing First policy.
11. Co-ordinate and oversee the activities of the Housing Advocacy Task Force in promoting housing program opportunities, influencing other Provincial Ministries to use their energy and resources to remove impediments, participating in interventions, and enhancing opportunities for increasing the supply of affordable housing. Work with the Housing Policy Wing to promote changes to policies and planning guidelines, and develop proposals for legislative change.
12. Direct and influence physical site planning on government-owned lands deemed suitable for housing under the Housing First policy, in conjunction with the Ministry of Government Services. Co-ordinate the development of site-specific planning and marketing strategies which include all financial data associated with development, marketing, and program application.

-
13. Liaise, negotiate, and assist the development industry, development representatives, municipalities, the Federal Government, and social housing providers interested in participating in the provision of affordable housing on government and other lands. Act as a conduit between groups in developing agreements or contracts to achieve affordable housing objectives.
 14. Undertake to consolidate inventories of land holdings by the Province, municipalities, and the Federal Government to ensure that housing providers (i.e., non-profit housing groups) are not competing for the same lands.
 15. Structure a joint committee with representatives from the Province and the Regions to assist in facilitating Housing First initiatives on Region-owned lands suitable for the provision of 30,000 units over the next five years.



2^e session, 34^e Législature
39 Elisabeth II

**Comité Permanent
des Comptes Publics**

**Rapport Spécial
Sur le Contrat
entre
Le Ministère du Logement
et M. Dino Chiesa**

